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GIFT OF RICHARD D. ROBINSON

THE
OTTOMAN LAND CODE.

1 vol. Laws, statutes, etc
=

THE
OTTOMAN LAND CODE.

TRANSLATED FROM THE TURKISH

BY

F. ONGLEY,

OF THE RECEIVER-GENERAL'S OFFICE, CYPRUS

(PASSED HIGHER STANDARD EXAMINATION IN TURKISH).

*REVISED, AND THE MARGINAL NOTES AND
INDEX ADDED,*

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EXPLANATION.



THE Arabic numerals which appear in the text within parentheses refer to the Translation of the Notes in the Législation Ottomane, for which *see below*, p. 279, *et seq.* Thus, on p. 1, we read—"Arazi Memluké (6) is of four kinds." The reference here is to note 6 on pp. 280-1.

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THE OTTOMAN LAND CODE (a).



I. LAND LAW (b).

PREFACE.

1. Land in Turkey is divided into five classes :—

Classifica-
tion of
lands.

i. Arazi Memluké. Lands held in fee simple, freehold lands (1).

ii. Arazi Mirié. Crown lands, belonging to the state exchequer (2).

iii. Arazi Mevkufé. Lands possessed in mortmain, but tenanted by a kind of copyhold (3).

iv. Arazi Metruké. Lands abandoned without cultivation or ostensible owner (4).

v. Arazi Mevat. Dead lands, uncultivated and unappropriated (5).

2. Arazi Memluké (6) is of four kinds :—

Definition
of Arazi
Memluké.

i. Building sites within the town or village (7), and places on the border of such town or village, of at most half a donum in extent considered as the complement of habitation.

Definition
of Arazi
Memluké.

ii. Land separated from Arazi Mirié which has been given into the possession of a person to be held freehold by patent from the Crown and to be possessed with all the conditions of freehold proprietorship in accordance with the permission of the Sheri (Religious Law).

iii. Arazi Ushrié. Places given into the possession and distributed among the conquerors at the time of the conquest.

iv. Arazi Kharajie. Places left in the hands of the original non-Moslem owners at the same time.

Kharaj Arazi is of two classes:—

One is Kharaj Mukaseme, from the produce of which land, according to its capability, one-tenth to one-half has been fixed to be taken.

The other is Kharaj Muwazzaf, on which land, by way of limitation, a fixed sum of money is assigned to be paid.

The servitude (8) of all Arazi Memluké, that is the land itself and its proprietorship, belongs to the owner: like other property and goods it can be inherited, and it is subject to the provisions of Vakf, mortgage (Rehn), gift and pre-emption (9).

When Arazi Ushrié and Kharajie belongs to the Beit ul Mal by the death of the owner without heirs, it acquires the effect of Arazi Mirié (10).

Procedure.

The procedure to be followed with regard to the four kinds of Arazi Memluké having been explained in the Kutb Fikhié (Books of Religious Law), the

provisions of Arazi Memluké will not be treated on in this law (11).*

NOTE.*—*The provisions in force with regard to Arazi Memluké are contained in the Mejele, and the procedure concerning sale, purchase, mortgage (terhin), inheritance, gift, and bequeathed are contained in No. 26.*

3. The servitude of Arazi Mirié belongs to the Biet ul Mal (12). The places of which the transfer and gift comes to the Government are arable fields, pastures, yaylaks, kishlaks, woods, &c., which formerly, in case of sale or vacancy, were held with the permission and through the gift of the possessors of Timars and Ziamets, who were considered the owners of the soil, and for some time with the permission and through the gift of the Multezims (13) and Muhasils (14).^(a) Subsequently, on account of these being abolished, as at present, they are held by the permission and through the gift of the person ^(b) appointed by the Government as official for this purpose, and a title-deed with the Tughra (15) at the top is given to the owner.

Tapu is the Muajele (immediate payment) given in exchange for the right to possess, and is collected by the official for the Government.

NOTE. *—*It is stated in Art. 4 of the Regulations dated 23. Muharem, 1293, Destur, Vol. III., p. 300, that Orders, Hujjets, and Sheri Ilams, concerning settlement of disputes, and unknown Sipahi, Multezim, and Mutessellim title-deeds, will not be considered as legally valid title-deeds for the possession of Forests.*

^b *Though it is stated in Art. 1 of the Tapu Law, dated 8. Jemazi ul akhîr, 1285, that these are the Defterdars and Mal and Kuza Mudirs, it has been notified subsequently in a Vezirial letter, dated 26. Zilhijs, 1290, that as the Defter Khakani and Tapu Memours have been appointed everywhere; these Memours are to be considered as the owners of the soil, and in places where the Tapu system has not yet been established until it is put into execution, the Mutessarifs, Defterdars, Kaimakams, and Mal Memours are to be considered temporarily as such.*

Classifica-
tion of
Arazi
Mevkufé.

4. Arazi Mevkufé is of two classes (16):—

i. Is land which while being really Arazi Memluké has been made Vakf in accordance with the Sheri. The servitude and all the rights of possession of this kind of Arazi Mevkufé being that which concerns the Vakf, the provisions of the law (17) do not apply to it; and as it is necessary that they should be treated in accordance with the conditions, whatever they may be, of the bequeather only, this class of Arazi Mevkufé will not be treated on in this law.*

NOTE.*—*In accordance with the Imperial Iradé communicated by Vezirial letter, cases concerning real Vakf land, Musakafat, and Musteghillat, and cases which should be heard through Mullahs are to be heard in the Sheri Courts.*

ii. Is land separated from Arazi Mirié which has been made Vakf by the Sultans or by others with the permission of the Sultan (18), as the Vakfiet of this kind of land only means that the Government dues, such as the tithes and taxes, of a piece of land

separated from Arazi Mirié have been assigned to some object by the Sultan, this kind of Arazi Mirié is not real Valef (Evkaf Sahiha). Most of the Arazi Mevkufé in the Imperial dominions is of this category ; and the servitude of this Takhsisat category of Arazi Mevkufé, like simple Arazi Mirié, being that which concerns the Beit ul Mal, the legal procedure which will be explained and stated hereafter will be carried out entirely regarding it. But in the same way as the fees on sale and inheritance, and the equivalent value of vacant (Bedel Mahlulat) simple Arazi Mirié belong to the Government, so also in this kind of Arazi Mevkufé they belong to the Vakf. As the provisions which will be stated hereafter with regard to Arazi Mirié shall also be applied to this category of Arazi Mevkufé, whenever the term Arazi Mevkufé is used in this law, this "Takhsisat" category of Arazi Mevkufé is meant. But there is also a kind of this category of Arazi Mevkufé of which, while the tithes and taxes (19) belong to Government in the same way as its servitude belongs to the Beit ul Mal, only the rights of possession have been assigned to some object, or its servitude belonging to the Beit ul Mal, the tithes and taxes together with the rights of possession have been assigned to some object. The provisions and procedure of the law do not apply to the sale and inheritance of this kind of Arazi Mevkufé, which are possessed and cultivated only on

Classifica-
tion of
Arazi
Mevkufé.

behalf of the Vakf, either by itself or by way of letting, and the profits derived therefrom shall be expended on the thing or person in whose favour it is stipulated (20).*

NOTE.*—*In accordance with the Imperial Iradé communicated by Vezirial letter, dated 21. Ramazan, 1296, cases concerning Arazi Mevkufé of the Takhsisat category, Arazi Mirié, Arazi Metruké, Arazi Mevat, and boundary disputes between villages and towns are to be heard in the Nizam Courts.*

Classifica-
tion of
Arazi
Metruké.

5. Arazi Metruké is of two classes :—

i. Are places which have been left for the public. Public roads are of this category (21).

ii. Are places which are left and assigned to the inhabitants in general of a village or town, or of several villages or towns. Pasture lands (meras) assigned to the inhabitants of towns or villages are of this category (22).

NOTE.—*See Note to Art. 4.*

Definition
of Arazi
Mevat.

6. Arazi Mevat is waste (Khali) land which is not in the possession of anybody, and, not having been left or assigned to the inhabitants, is distant from town or village so that the loud voice of a person from the extreme inhabited spot cannot be heard, that is about a mile and a half to the extreme inhabited spot, or a distance of about half an hour (23).

NOTE.—*See Note to Art. 4.*

7. This Land Law is divided into three books:—

Arrange-
ment.

Book I. Arazi Mirié.

Book II. Arazi Metruké and Arazi Mevat, in
which book Mountains (Jibal Mubah) will also
be treated.

Book III. Muteferikat (Diverse) (24).

BOOK I.

ARAZI MIRIÉ.

CHAPTER I.—TASARRUF (POSSESSION).

CHAPTER II.—FÉRAGH (CESSION, SALE, ALIENATION).

CHAPTER III.—INTIKAL (TRANSMISSION BY INHERITANCE).

CHAPTER IV.—MAHLULAT (VACANT, ESCHEATED).

CHAPTER I.THE MODE OF POSSESSION (TASARRUF) OF ARAZI
MIRIÉ (25).Distribu-
tion of
land and
delivery of
title-deeds.

8. The whole of the lands of a town or village cannot be granted *en bloc* to the whole of the inhabitants nor by choice to one, two, or three of them. Different pieces of land are given to each inhabitant, and title-deeds (Tapu sened) showing their possession (26) are delivered to them.

9. Every kind of thing, that is wheat, barley, rice, madder root and other grain, is sown, or is caused

to be sown, by letting or lending, on Arazi Mirié that is capable of cultivation. Without proving (27) one of the valid excuses that will be stated in the chapter on Mahlulat it cannot be left fallow. Mode of cultivation.

10. Meadows (28) from which the grass is reaped *ab antiquo* and from which titheable produce is taken are the same as cultivated lands and are possessed by Tapu. Only the possessor profits by the grass which grows and he can prevent another from profiting by it (29). Meadows of this kind can be broken up and cultivated with the permission of the official. Meadows held by Tapu.

11. Only the owner of the land profits by the grass called "Kilimba" which grows on land held by Tapu and which has been left fallow in order to rest the land according to its degree of productiveness (30). He can prevent another from entering that land and from letting his animals enter and graze (31). Owner of Kilimba.

12. Without permission from the official a person cannot use the earth of the land which he possesses to make things like bricks and tiles. If he has made them the local value (32) of such earth, whether such land be Arazi Mirié or Mevkufé, shall be taken from such person for the Treasury. Land not to be cut up for clay.

13. A person can prevent another from passing without right (33) through the land which he owns by

Provision against trespass. Tapu, but he cannot do so (34) if there is *ab antiquo* a right of passage through that land.

Provision against trespass. 14. Another person cannot arbitrarily open a channel on the land of the person who possesses it without having obtained his permission and help. And he cannot make a threshing-floor and in any other way also arbitrarily take possession (35) of it.

Severance of shares in partners' lands. 15. Land possessed in partnership capable of division, that is, if it is possible for each one of the partners to derive a profit from his allotted share, and the partners or some of them ask for division (36), the share of each one shall be separated and assigned by the official in the presence of the partners or their legal agents by drawing lots according to the Sheri and other equitable means. And if it is not capable of division it shall be possessed as before in partnership. "Muhaiat," that is to say, the system of possession by turns, is not applicable (37).

Severance to be final. 16. On the division of the land in the way stated in the preceding article, after each partner has fixed the boundaries (38) and taken possession of his share, none of them shall be able to annul the division and cause a fresh one (39).

Condition precedent to severance. 17. Land cannot be divided without obtaining the permission and the assistance of the official and without the owners or their legal agents being present.

If it has been divided such division will not be respected (40).

18. Lands capable of division in the manner stated in Art. 15 shall be divided through the medium of the guardians (41), if the owners or some of them of land in partnership are minors. The lands of lunatics and imbeciles shall likewise be divided through their guardians (42).

Lands of infants, lunatics, &c. : how divided.

19. The person who has the sole possession by Tapu of such places as forests and pernallik (43) can make it into arable land (44) by opening it up in order to cultivate it. But one of the persons who holds such places in partnership cannot, without the permission of the other partner, make the whole or part of it into arable land by opening it up. If he has made it, the partner can also (45) be partner in such cleared land (46).

Conversion of forests, &c., into arable land.

20. Actions concerning Tapu land which has been held for ten years without opposition will not be heard without one of the legal disabilities, such as minority, madness, force, and being absent in a distant country, having been proved according to the Sheri. They will be heard up to ten years from the date of the cessation of such valid excuses, and after that time has passed they will not be heard. But if the defendant admits having unlawfully seized and cultivated the land, attention will not be paid to the

Limitation of actions.

Admission by defendant of wrongdoing.

lapse of time and possession, and the land will be taken and given to the owner (47).

NOTE.—*It is notified in the Mazbata of the Mejele Commission that the period during which actions can be taken by the Arazi Memours concerning the servitude of land is 36 years. According to Art. 1662 of the Mejele, the prescriptive period for cases concerning private roads, beds of streams, and watering rights on Arazi Mirié is 10 years.*

No claim
for deteri-
oration of
land taken
unlaw-
fully.

21. Land which has been seized and cultivated unlawfully or by force, and on which the taxes have been paid every year, after having been taken and given back by the official after trial, neither the official nor the person taking back his land shall have the right to claim an indemnity for the deterioration of the land (48) or an equivalent rent (Ijri Misl) from the person who unlawfully or by force seized and cultivated it. This procedure will also be followed with regard to the lands of minors, lunatics, and imbeciles (49).

Crops upon
land which
has been
unlawfully
held.

22. When the land taken and cultivated unlawfully or by force has been restituted, the restitutee can have the crops or other produce sown by the restitutor who took the land, by the means stated, pulled up and given to him, but he has no right to keep them (50).

NOTE—*Appendix authorized by Imperial Iradé and published in the newspapers: "If the seed has not yet come up, the restitutee will deliver its equivalent to the restitutor and take possession of that sown."*

23. If a person lets or loans to another the lands which he possesses, the lessee or borrower has no fixed prescriptive right over the land on account of having possessed and cultivated it for a long time, while it is admitted that he is the lessee or borrower. In this case no consideration is paid to the lapse of time, and the owner of the land has at all times the right to take it from the hands of the lessee or borrower (51).

Estoppel of
lessee or
borrower.

24. Places other than yaylaks (52) and kishlaks assigned to the inhabitants of one or several villages which have been made into independent yaylaks and kishlaks *ab antiquo*, and which have been possessed independently or in partnership by Tapu, are not different to cultivated land and the legal procedure stated above and to be stated hereafter shall be entirely applicable to them. And taxes called yaylakié and kishlakié shall be taken from the owners of these two kinds of yaylaks and kishlaks according to their means.

Applica-
tion of law
to yaylaks
and kish-
laks.

25. Without the permission of the official a person cannot make into a garden or vineyard (53) the land he possesses by planting vines and different kinds of fruit trees. Even if he has done so without permission the Government has the power during three years to make him pull them up (54). If three years have passed, and the trees have arrived at a stage to

Land not
to be con-
verted.

Vineyards
and
orchards.

be a source of benefit to him, they should be left as they are; but the fruit trees planted without the permission of the official and which have been left for more than three years, and those planted with the permission of the official are not subject to the land,

Tithe to be
taken, and
not
Mukata.

but are the freehold property of the owner, tithe shall be taken every year on their produce. Mukata cannot be assessed on the lands of these gardens and vineyards on which tithe is taken on the produce of the trees.

Ownership
of trees
grafted.

26. If a person has grafted the trees growing naturally on the land possessed by him independently or in partnership such trees become his freehold property, and they shall not be interfered with by his partner or by the official: only the lawful tithe shall be taken on their annual produce.

Only owner
can graft
trees.

27. Without the permission of the owner a stranger has no right to graft the trees growing naturally on the land possessed by a person and make them his freehold property. If anybody is about to graft them the owner can prevent him. If they have been grafted the owner has the power through the official to have the trees cut off at the place where they have been grafted (55).

28. Fructiferous and non-fructiferous trees, such as the palamud (56), walnut, chestnut, gurgun (57) and

oak (58), growing naturally on Arazi Mirié are subject to the land (59), and the profit belongs to the owner of the land. But the lawful tithe shall be taken for the Government, on the produce of fructiferous trees. The trees of this kind which grow naturally cannot be cut down or pulled up by the owner or by a stranger. If they have been, the value of such tree when standing (60) shall be taken for the Treasury from the person who cut it down or pulled it up.

Fruit, &c.,
of trees.

Trees not
to be cut
or de-
stroyed.

NOTE.—*A law having been passed by Imperial Irade, dated 16. Sheval, 1286, stating that the standing value of wild trees belongs to the owner of the land; the authority of the sentence written in this 28th article concerning the said value belonging to the Government is abolished.*

29. If a person has created the land which he possesses into a wood by planting on it with the permission of the official non-fructiferous trees, the trees become his freehold property, and only he has the right to cut them down and pull them up. If anybody else cuts them down he shall pay the value of the tree when standing. An ijaréi zemin equivalent to the tithe is fixed on the land occupied by this kind of wood, consideration being paid to its difference in demand according to locality (61).

Ownership
of timber.

30. Woods, other than Jibal Mubah (62) and woods and forests assigned to the inhabitants of villages,

Woods and forests to be held by Tapu. on which the trees grow naturally and which have been possessed as places for collecting firewood ancestrally or by cession or sale from another, shall be held by Tapu and only the owner can cut down the trees. If a stranger is about to cut them down he can prevent him from doing so through the official. If he has cut them down, the value of the trees when standing shall be taken for the Treasury. An *ijaréi zemin* equivalent to the tithe shall be taken by the Government for the land occupied by these woods. The procedure belonging to other lands (63) shall be followed concerning this category of woods also.

Tithe.

NOTE.—See note to Art. 28. See also the Regulations, *Destur*, Vol. III., p. 300, concerning the mode of examination and inspection of title-deeds issued before the 11. Sheval, 1286, date of publication of the Forest Law *Destur*, Vol. II., p. 404, to persons claiming possession of woods of this kind.

New buildings. 31. Without the permission of the official, new buildings cannot be erected on *Arazi Mirié*. If they have been erected the Government can have them demolished (64).

Buildings erected with leave. 32. If it is necessary that buildings should be erected by the owner on *Arazi Mirié*, such buildings as *Chiftlik* houses, mills, sheep-folds, sheds, stores, stables, straw-barns and farm-yards (65), can be erected through the official, but, in accordance with the value of the land locally, an *ijaréi zemin* equivalent to the tithe

shall be fixed to be taken annually. It depends on the special order of the Sultan for habitations to be made on raw land on which there is not the sign of a building and form it into a village or quarter by erecting new buildings, only the permission of the official is not sufficient.

Formation
of village,
&c.

NOTE.—*The fees to be taken on the sale of raw Arazi Mirié and Mevkufé to be made into a Quarter, are stated in the Vezirial letter Destur, Vol. IV., p. 420.*

33. Neither the owner nor another may bury a corpse on land held by Tapu. In case any one has done so, if the buried corpse has not been reduced to dust, the official shall have it removed to another place. If the corpse has been reduced to dust the surface shall be levelled.

Burial of
corpses.

34. Lands which have been held by Tapu, independently or in partnership, and which have been created into threshing-floors (66) by separation from Arazi Mirié, shall be subject to the same procedure as other land. The lands separated from Arazi Mirié, and occupied by salt-pans, are also of this category. For these kinds of lands a Mukatai zemin equivalent to the tithe shall be taken annually.

Threshing-
floors and
salt-pans.

NOTE.—*Salt-pans being under a monopoly, the authority of this article concerning them is abrogated.*

Law
against
trespass.

35. If another person without right erects buildings, or plants trees and vines on land which is actually possessed by a person, the owner has the right to have such buildings, vines, and trees demolished, or pulled up through the official (67).

Partners.

If one of the partners, without the permission of the other, unlawfully erects buildings or plants trees on the whole of the land held in partnership, this procedure shall be followed regarding the share of the other partner (68).

Conflicting
claims of
owner and
of tenant :
how ad-
justed.

But if a person has in his possession a valid title-deed obtained by one of the means of acquiring possession, such as cession or sale from another, or conferred on him by the Government under the impression that it was *Mahlul*, or inheritance from father or mother, and after having erected buildings or planted trees on the land held by him, a person appears and asserts his right to the land occupied by such buildings or trees, if he proves his right to possession, and the value of the buildings and trees, after having been demolished or pulled up, is more than the value of the land, the actual value of the land shall be given to the person who proves his right, and the land, buildings, and trees shall be left in the possession of their owner. If the value of the land is more than the value of the buildings and trees, the value of the buildings and trees shall be given to the owner if he deserves to have them eradicated, and the buildings and trees shall be given to the person who proves his right (69).

If one of the partners, without the permission of the others, erects buildings or plants trees on a part of the land owned in partnership, the land is divided in accordance with Art. 15; and if the land on which the buildings and trees are falls to the share of the partner (who did not build or plant them), the procedure (para. 3 of the present Art.) (70) shall be carried out.

Claims of partners :
how adjusted.

CHAPTER II.

CONCERNING THE MODE OF SALE, CESSION, OR
ALIENATION (FÉRAGH) OF ARAZI MIRIÉ (71).

Mode of
conveyance
of Arazi
Mirié.

36. The owner can alienate the land which he holds by Tapu to the person whom he chooses, either gratis or for a known price. The alienation of any Arazi Mirié without obtaining the permission and assistance of the official is not valid, and the possession of the alienee in the land taken by him in every case depends on the permission of the official. If the alienee dies without the official having given permission, the alienor can become owner of his land as before. If the alienor dies, and if he has heirs as

Devolution
of such
lands.

under (72), having the right of inheritance, it succeeds to them ; and, if he has not, it becomes the right of Tapu (73) and the alienee receives from the estate of the alienor the price which he paid. Likewise, the exchange of land is also always dependent on the permission of the official (74). When the owner of land is going to sell or give it with the permission of the official, the presence of the purchaser, or some one on his behalf (75), is necessary, in order to buy or receive it.

Purchaser,
&c., to be
present.

37. Only the permission of the official is sufficient (76) in the sale of Arazí Mirié. After a person has sold to another, with the permission of the official, his land, if the person who sold the land dies without the purchaser having taken out Tapu Sened the sale is valid and the land cannot be looked upon as Mahlul. Leave of official.

38. After a person has alienated to another his land gratis—that is to say, without naming a price—he shall not have the power subsequently to claim a price for the land, nor have his heirs the power to do so on his death. After having sold to another, with the permission of the official, for a known price, if the said price has not been paid by the purchaser to the vendor, the latter, and after his death his heirs having the right to inheritance, have the right to take back the land from the purchaser, or, if he is dead, from his heirs having the right of inheritance. If the said price has been paid, no right remains to claim restitution as above (77). Conveyance without consideration. Failure to pay consideration money.

39. After a person has alienated to another his land gratis or for a known value by a decisively valid alienation, with the permission of the official, he cannot retract from the alienation (78). Conveyance binding.

40. After a person, with the permission of the official, has alienated his land to another, if he also alienates it to another again, without the permission of the alienee, the second alienation is not valid (79). Protection of first alienation.

Lands of
partners.

Limitation.

See p. 240.

41. A person holding land in partnership cannot, without the permission of his partner, alienate his share gratis or for a price ; if he has alienated it, his partner has, during five years, the right to take such share from the person who takes it for its equivalent value (Bedel Misl) at the time when he wants it. And even if this five years lapses, by such disabilities as minority, insanity, or travelling in a distant country, after such period has elapsed the right to claim it does not remain. And if at the time of the alienation, the said partner has lost his right by refusing to give permission or to take it when it was offered to him, he cannot afterwards claim it.

NOTE.—*Appendix dated 19. Shaban, 1291, 18. September, 1290, Destur, Vol. III., p. 457. "If during this five years the partner dies, his heirs having the right of inheritance, have the right and the power to take such land in the manner stated from the alienee. If the alienee is dead, the partner shall have the right and the power to take such land in the manner stated, from the alienee's heirs having the right to inheritance. If both the partner and alienee are dead, the partner's heirs having the right to inheritance, have the right and the power to take such land in the manner stated from the alienee's heirs, having the right to inheritance.*

Alienation
of share by
partner.

42. When one of the partners of three or more than three is about to alienate his share to another, one of the partners cannot have the preference over the others. If the others are candidates also, they have the right to take such share in partnership. If one of the said partners alienates to another partner the whole of his share, the other partner can take the share which

falls to him of such share, and the rules stated in the foregoing article are also applicable concerning these.

43. When a person alienates unlawfully to another, with the permission of the official, the land of another or of his partner, without having a Vekialet from the owner to alienate, if the owner of such land does not agree to such alienation he can, through the official, take back his land from the person who unlawfully bought it (80). Unauthorized alienation.

44. The owner of land on which there are trees or buildings, the freehold property of another, and which is held and cultivated in subjection to such trees or buildings, cannot alienate it to another gratis, or for a price, while the owner of the trees and buildings is willing to take it for its Tapu value. If he has alienated it he has the power to claim such land during ten years, and he has the right to take it, for its equivalent value (Bedel Misl), at the time when he asks for it. And in this matter such disabilities as minority, insanity, and travelling in a distant country, are not valid (81). Preference of owner of land as to trees or buildings thereon.

45. If a person holding land by Tapu within the boundary of one village, alienates it to a person who is an inhabitant of another village, the inhabitants of the village in which the land is, having need of Alienation of one of another village.

it, have the power to claim it during one year for its equivalent value (Bedel Misl) (82).

No pre-emption by adjacent owner.

46. Pre-emption, which is applicable to freehold property (Emlak), is not applicable to Arazi Mirié and Mevkufé. That is, if a person alienates to another the land which he owns for a known price, the person who has the same boundary has not got the power to claim it, saying, "I will take it for that price" (83).

No remedy for mistake as to area.

47. In land which has been alienated as so many donums or ziras (84), the number of donums or ziras shall be taken into account (85); but in land which has been alienated, and the boundaries have been fixed and pointed out if the number of donums and ziras have been stated or not, the number of donums and ziras shall not be taken into account, and attention shall only be paid to the boundaries. For instance, a person after having alienated to another his land by showing and fixing the boundaries, and saying it comes to twenty-five donums, on its becoming apparent that the said land is thirty-two donums he cannot meddle with the alienee by saying, "Separate the seven donums and I will take them back," or "I want more money," and if the alienor dies after having alienated it, his children, father or mother are not able to meddle with the alienee either. Likewise, if the said land only amounts to eighteen donums, the alienee

cannot reclaim from the alienation-money the amount proportionate to seven donums (86).

48. When a person alienates his land to another, the ^{Trees.} trees growing naturally thereon are subject to the land, and in every case are included in the alienation (87). But the alienee has no right to take possession of the freehold trees growing on such land without having purchased them by so stating at the time of alienation (88).

49. If the owners of freehold (Mulk) trees, vineyards, ^{Mulk} and buildings which have been planted and built sub-^{buildings,}sequently through the medium of the official on land ^{trees, vine-}which is possessed by Tapu, sell them to another, ^{yards, &c.} the land also is caused to be alienated through the medium of the official to the person who buys the trees, vineyards and buildings. The same procedure is followed with regard to woods of which the land belongs to the State, and the trees mulk (89).

50. The alienation to others by minors, lunatics, ^{Disability} and imbeciles of the lands belonging to them is not ^{of infants,} valid, if they have alienated them and die before ^{lunatics,} their majority or cure: if they have any heirs having ^{&c.} the right of inheritance as stated hereafter, they are inherited by them, if they have none, it becomes the right of Tapu (90).

Purchase
by infants,
lunatics,
&c.

51. Minors, lunatics, or imbeciles cannot buy and have land conferred on them (91), but if it is evident that it will be a source of benefit to them, their parents or guardians as parents or guardians can purchase land for them (92).

Sale of pro-
perty of
infants,
lunatics,
&c.

52. The parents or guardians of minors cannot alienate to another for debt or maintenance or any other cause the land which belongs to the minors by inheritance from their father or mother or by any other means. And they cannot pass it on to themselves. If they have alienated it to another, or if they have passed it on to themselves, the minors can, through the medium of the official, take back the land from the person in whose possession it is during ten years after they have attained their majority and are capable of possessing it, and if they have died before attaining their majority the said land passes to their heirs having the right of inheritance, if they have any. If they have none it becomes the right of Tapu (93). But if the Chiftliks of minors are not administered by their guardians in such a way as not to cause them loss, and it has been ascertained that the appurtenances being costly by their destruction and loss, total loss will be caused to the minors, it is necessary that they should be sold in accordance with the permission of the Sheri; if it is proved by the Sheri that by reason of the separation of the buildings and other appurtenances from the land the remainder of the land only

How to be
effected.

is injurious to the minors, a permission Hujet will be got from the Sheri, and the appurtenances with even the land can be sold for their equivalent and true value. After having been sold in the manner stated above no right remains with the minors to claim the restitution and take possession of the land and appurtenances after they become of age. The procedure to be followed with regard to the land of lunatics and imbeciles is also as above (94). Sale binding.

53. If the owner of gardens and vineyards, which have been created by trees and vines being planted on Arazi Mirié and Mevkufé or of buildings which have been erected, be a minor, lunatic, or imbecile, his parents or guardians can sell to another this kind of vineyards, gardens, and buildings in accordance with the powers granted by the Sheri, and they may also alienate the lands in subjection to such freehold property (95). Sale of gardens and vineyards of infant, lunatic, &c.

CHAPTER III.

CONCERNING THE MODE OF TRANSMISSION BY INHERITANCE OF ARAZI MIRIÉ (96).

Devolution
of Arazi
Mirié.

54. On the death of one of the owners of Arazi Mirié and Mevkufé the land belonging to him or her (97) goes by inheritance equally, gratis, and without price to his male and female children, whether they are in the place where the land is or whether they are in another country. If there is only a male or only a female child it is likewise transmitted by inheritance independently without price (98). If one of the owners of land dies and his wife is pregnant such land shall be kept until the birth of the child (99).

NOTE.—*The provisions of this article with regard to the mode of inheritance have been annulled by the provisions of the law dated 17 Muharem, 1284, concerning the mode of inheritance of Arazi Mirié.*

Descent to
parent.

55. The land of owners of Arazi Mirié and Mevkufé who die without children is transmitted by inheritance gratis, in accordance with the preceding article to his father, if alive, if not to his mother (100). (*See note to Art. 54.*)

56. If some of the children of the deceased exist and are present, and some of the children are absent, in a state of total absence (Ghaibeti Munkataa), his land shall be given to those existing and present (101); but if the absent one appears within three years from the date of the death of his father or mother, or if it is proved that he is alive, he takes his share in such land. The procedure with regard to father and mother is the same as this (102). (*See note to Art. 54.*)

Right of
absent
child or
parent.

57. The land of a person who has been absent in a state of total absence (Gaibeti Munkataa) for three years, and whose existence or death is unknown, shall, as stated in the preceding article, be inherited by his children, if he has no children, by his father, and if he has no father, by his mother. If he has none of these it becomes the right of Tapu, that is to say, if there are any persons possessing the right to Tapu as stated hereafter, it shall be conferred on them for the Tapu value (Misl), if there are none, by auction on the candidate (103). (*See note to Art. 54.*)

Right of
children
of absent
owner.

58. The land of the father, mother or children of a person who is a soldier in the Imperial Army, and who is actually serving in the army in another country, shall be inherited by him whether his existence be known or whether he be absent in a state of total absence (Gaibeti Munkataa), and such land cannot be conferred on any person unless his death be legally

Privilege
of soldier.

Privilege
of soldier
as to lands.

proved ; if it has been conferred, such person, at whatever time he appears, has the power to take possession of the land which he has inherited by taking it from whoever he may find in possession. But in order to secure the taxes due on the land, if he has no relations or trustees to manage his property, it may be given to another person to be cultivated, and by whom the taxes due on it shall be paid (104). (*See note to Art. 54.*)

Taxes.

CHAPTER IV.

CONCERNING THE MAHLULAT (VACANCY, ESCHEATION) OF ARAZI MIRIÉ (105).

59. If the owner of land die without leaving children, father or mother, his land shall be given :—
- i. To his brother by the same parents or by the same father for its Tapu value (Misl), that is to say for a value fixed by impartial experts who know its productive power according to locality and its extent, number of donums, and boundaries. This heir has during ten years the right to claim this land and to demand its restitution.
- ii. If he has no brother by the same parents or the same father, it shall be given to his sister by the same parents or by the same father for its Tapu value, whether she resides or not in the town or village where the land is situated. Her right to vindication extends to five years.
- iii. If he has no sister by the same parents or by the same father, it shall be given for its Tapu

Death of
owner
without
children
or parent
surviving.

Right of
brother
and consan-
guineous
brother.

Right of
sister
and consan-
guineous
sister.

Right of
grand-
children,
i.e. children
of pre-
deceased
son.

Right of
husband or
wife.

Right of
uterine
brothers
and sisters.

Right of
grand-
children,
i.e. children
of pre-
deceased
daughter.

Right of
owner of
Mulk trees
or build-
ings.

value in equal portions to the male and female children of the son. Their right of vindication extends to ten years.

iv. If there are no male or female children of the son, it shall be given for its Tapu value to the surviving husband or wife. Their right to vindication is for ten years.

v. On failure of surviving husband or wife, it shall be given for its Tapu value and in equal portions to the brothers and sisters by the same mother. Their right to vindication extends to five years.

vi. On failure of brother or sister by the same mother, it shall be given for its Tapu value and in equal portions to the male and female children of the daughter. Their right of vindication lasts five years.

vii. On failure of these, if on the land there are Mulk trees or buildings, the said land shall be given for its Tapu value and in equal portions to the persons who inherit the trees or buildings. Their right of vindication extends to ten years. There are no other persons than the above who, being relations, possess the right of Tapu (106).

viii. On failure of heirs included in the above categories, the land is given for its Tapu value

to the partners or co-interested. Their right to vindication is for five years (107).

ix. On failure of partners or co-interested, the land is given for its Tapu value to inhabitants of village in which it is situate who have need of it. Disposal of lands on failure of heirs, &c. Their right of vindication is for one year. If several inhabitants of the said village have need of the land and all of them are candidates for the land which has become the right of Tapu as above stated, the said land shall be divided, if there be no inconveniency in it, and each person shall receive the grant of a share. But if the land is not susceptible of division, or if there be any objection to its division, it shall be given to the person to whom it is most necessary. If all have an equal want of it, it shall be given to the one amongst them who has served personally and actively in the army, and, having served his time, has returned to his home. Privilege of soldier. On the failure of a person with these qualifications lots shall be drawn, and the land shall be given to him to whom fate has given it.

After it has been thus awarded, the land cannot in any way be demanded or claimed by any other person (108). Finality of award. (*See note to Art. 54.*)

60. If the owner of the land has died without leaving heirs who possess the right of inheritance, that is, children, father or mother, also no person possessing

On cessor
of right of
Tapu, land
becomes
Mahlul.

the right of Tapu (109) as above mentioned, or, if having left any, they lose their right of Tapu in the land by abstaining from taking it for its Tapu value, the land then becomes simple Mahlul and shall be conferred by auction * on the candidate (110). But if the persons possessing the right of Tapu are minors or insane, the losing of their right, either by themselves or by their parents or guardians, is not valid (111). (*See note to Art. 54.*)

Protection
of infants,
lunatics,
&c.

NOTE.*—*Concerning a non-Mussulman subject also taking part on an equal scale in such auction. See Law, dated 7. Muharem, 1293.*

Period for
assertion
of right to
Tapu.

61. The period fixed for the above persons possessing the right to Tapu to vindicate it, commences from the date of the death of the owner of the land, and during that time whether the land has been given to another person or not, the said persons may have it granted to them by the Government on paying the Tapu value at the time of their claim. After these periods have expired or the said persons have lost their rights their claims cannot be admitted. The disabilities such as minority, insanity, or absence on a journey in a distant country, are not valid in actions for vindication of the right to Tapu, even if for these reasons they allow the periods fixed to lapse. On their lapsing, the right to Tapu is lost (112). (*See note to Art. 54.*)

62. If one of the persons who possess the right to Tapu in equal degree with others suffers the forfeiture

of the right by refusing to take for its Tapu value his share of the vacant land, the other may take the whole of the land for its Tapu value (113). (*See note to Art. 54.*)

Forfeiture
by one
person of
right to
Tapu.

63. If it has not been possible to transfer the vacant land to the possessors of the right to Tapu on account of their being minors, insane or travelling in a distant country, its Tapu will not be delayed, but on the understanding that the former according to their degree have power to claim it within the time fixed, it will be given to the possessor of the right to Tapu of a like or lower degree, if any, for, as is customary, its Tapu value. If there are none, or the right has been allowed to lapse, it will be put up to auction and given to the candidate (114). (*See note to Art. 54.*)

Sale sub-
ject to
rights of
infants,
lunatics,
&c.

64. If one of the first degree of the nine classes of possessors of the right to Tapu abstains from taking the land to which he has a right to Tapu for its Tapu value and allows his right to lapse, it is offered to those in the second degree, and if they abstain it is offered in turn to every degree up to the last, and if they all abstain then it is given by auction to the candidate (115). If one of the possessors of the right to Tapu dies before Tapuing the land to which he has a right to Tapu, his right to Tapu does not revert to his children and other heirs (116). (*See note to Art. 54.*)

Successive
degrees of
persons
entitled.

Right of
guardians
of infant
or lunatic.

65. If the possessors of the right to Tapu are minors, insane, or imbecile, and if it be any advantage to them, their parents or guardians may take the land to which they possess a right to Tapu for its Tapu value (117).
(*See note to Art. 54.*)

Preferen-
tial right
of owner of
trees and
buildings.

66. If the owner of land, on which there are Mulk trees and buildings belonging to a stranger^(a), and which is cultivated and possessed in subjection to those trees and buildings, dies^(b) without having anyone who possesses the right to Tapu aforementioned, the owner of the trees and buildings shall have the preference to any other, and, if he desires, it shall be transferred to him for its equivalent value (Bedel Misl), and if without being offered to him it has been given to another he shall have the right to claim it for ten years for the equivalent value (Bedel Misl) at the time of claim (118).
(*See note to Art. 54.*)

NOTE.(*)—*The causes of a stranger's possession in this way are given in Art. 35. (b) According to Art. 44, even if the owner is alive he cannot sell the land to someone else, he must alienate it to that person.*

Privilege
of soldier.

67. To persons who have the right to Tapu, and who are soldiers who are proved to have served actually and personally in the ranks of the Regular Army (Asaker Nizamié), five donums of the land to which they possess the right to Tapu shall be given gratis and without payment of value (Bedel): for any

excess over five donums the provisions of the law with regard to other possessors of the right to Tapu shall be carried out (119). (*See note to Art. 54.*)

68. If the owner of any arable land does not cultivate it himself or cause it to be cultivated by another by lending or letting it, but allows it to lie fallow for three successive years without having proved any valid excuse, such as allowing it to rest for one or two years according to its degree of capability, or for more than one or two years in an exceptional case according to locality (120), or the necessity of leaving it fallow until it has acquired the power of cultivation (121) after the water which inundated it for a time has receded, or being a prisoner of war, such land, whether the owner be in the place where the land is or at a distance travelling (122), becomes the right of Tapu. If the former owner wishes it to be transferred to him again it may be transferred to him for its equivalent value (Bedel Misl). If he does not wish it, then it is transferred by auction to the candidate (123).

Disposal
of unused
land.

Recovery
of land
lost.

69. Land belonging to anyone which for a long time has been inundated, and from which the water has receded, does not become by this fact the right of Tapu, the ancient owner takes possession of it as before (124). If the old owner is dead, his children, father or mother take possession of it; on

Right of
former
owner to
land which
has been
flooded.

Disposal of
land which
has been
flooded.

failure of these the right to Tapu shall be given for its Tapu value to the owner thereof (125). After the water has receded and the land has acquired the power of cultivation, if the owner, or those who have got the right of inheritance (Hak Intikal) as aforesaid do not utilise it, and without excuse leave it uncultivated during three successive years, it shall then become the right of Tapu. (*See note to Art. 54.*)

Preserva-
tion of
rights of
alienee or
heirs.

70. If a person, after having abandoned his land for two consecutive years without excuse, alienates it to another, or dies, and his children, father or mother inherit it, and the alienee or those who have the right of inheritance also leave it uncultivated without excuse for the following one or two years, that land does not become the right of Tapu. (*See note to Art. 54.*)

Heirs to
pay Tapu
value of
untilled
land in
certain
events.

71. If the possessor of lands which have been proved to have been left uncultivated without excuse for three consecutive years, as aforesaid, dies at the end of three years, before the land has been given to another by the official, and leaves children, father or mother, the lands will not be inherited by the latter gratis, but they will be offered to them for the Tapu value, and in case they refuse, or if the said possessor has died without heirs having the right to inheritance, they will be put up to auction and will be given to

the bidder (126) without the possessor of the right to Tapu being sought for. (*See note to Art. 54.*)

72. If all or part of the inhabitants of a town or village quit the place for legitimate reasons, the land belonging to them does not become the right of Tapu, but if the abandonment of the country take place without valid motive, or if the inhabitants do not return within three years from the time when the legitimate reasons which forced them to quit have ceased, and if they thus leave the land uncultivated, it shall then become the right of Tapu. Abandoned lands.

73. Land belonging to a soldier in the Imperial Army who is actually and personally employed in the military service in another country, whether the land be cultivated by letting or lending it, or whether it remain *in statu quo* and non-productive, shall not become the right of Tapu so long as the decease of the owner shall not have been proved. If by chance it has been given to another, the soldier on returning to his home after the end of his time of service may take it from whomsoever may hold it (127). Preservation of rights of military.

74. If a person whose existence is known, and who is travelling in another country, inherits land from his parents or children, and if he does not come himself to cultivate the land he has inherited, or does not depute in writing or otherwise some one to cultivate it and Disposal of land of absent heir.

leaves it idle for three successive years without excuse, such land becomes the right of Tapu. (*See note to Art. 54.*)

Devolution
of land
when heir
is absent.

75. If at the death of the owner of the land it is unknown whether the absent (*Gaibeti munkataa*) (128) heirs possessing the right of inheritance (*Hak Intikal*), be dead or alive, the said land becomes the right of Tapu. If, however, the heir appears within three years, counting from the day of the decease of the person from whom he inherits, he has the right to take, free of expense, possession of the land; if he does not appear before the end of this term he is no longer able to claim it.

Manage-
ment of
land be-
longing to
minors,
idiots, &c.

76. Land belonging to minors, idiots or imbeciles cannot in any case become the right of Tapu on account of not being cultivated. If the guardians without excuse do not cultivate it themselves or cause it to be cultivated by others for three successive years, the said guardians will be invited by the Official (*Memour*) to cultivate it themselves or to have it cultivated by others. If they abstain or refuse to cultivate it, with the sole object of preserving it from a state of non-cultivation, the land shall be let by the Official to whoever wants it for its equivalent rent (*Ijaré-i-Mislié*); the rent fixed to be paid by the tenant, shall be paid to the guardians for the minors, idiots, or imbeciles. After attaining their majority, or after

recovering their senses, they can take back the lands from the hands of the tenant (129).

77. If it be proved that a possessor of the right to Tapu of the first degree, without having obtained the vacant land from the Government, conceals and holds it unlawfully for a time less than ten years, the land shall be granted to him on his paying its Tapu value at that time. If he does not wish it, it will be granted to another possessor of the right to Tapu, if any, for whom the delay fixed according to his degree shall not have passed. If there are none, or if there are any who have lost their right, it shall be put up to auction and given to the candidate.* If, as above, the person proved to have held and cultivated unlawfully for less than ten years be a stranger, the land shall be taken from him and granted to the possessor of the right to Tapu for its Tapu value at that time (130). If there be no possessor of the right to Tapu or if he has lost his right, it shall be given by auction to the candidate. (*See note to Art. 54.*)

Disposal of land in case of illegal possession.

NOTE.*—Concerning a non-Mussulman subject also taking part on an equal scale in such auction, see Law dated 7. Muharem, 1293, and though the auction should be carried out in accordance with Art. 18 of the Tapu Law, the said article has been amended by a fresh article dated 27. Sheval, 1303.

78. If a person has possessed Arazi Mirié and Mevkufé for ten years without disturbance his pre-

Acquisition of title by length of possession.

scriptive right (Hak Karar) becomes proved, and whether he has a title-deed or not such land cannot be looked upon as Mahlul, but a new Tapu Sened should be given to him gratis. But if he admits that such land was Mahlul and he took it without right, no consideration will be paid to the passage of time, but the land will be offered to him for its Tapu value, and if he refuses it will be sold by auction to the candidate (131).

Rights of
tenant who
holds with-
out legal
title.

79. Nothing shall be claimed as rent (Ijri Misl) or as decreased value of land (Noksan Arz), from any person who has arbitrarily taken vacant (Mahlul) lands, Mirié or Mevkufé, and has cultivated them, as is mentioned in the two preceding articles, and has paid the taxes due by the land (132).

Ownership
of crops
sown by
deceased
tenant
(emblem-
ments).

80. If the owner of an arable field dies after having sown it without leaving heirs who possess the right of inheritance (Hak Intikal), and the said field has been granted by the Official to the person possessing the right to Tapu, or to any other candidate, the crops growing on that land will be considered as part of the estate of the deceased, and the person who takes the land has no right to have them pulled up nor to claim any fee from the heirs. It will be the same thing with the grass which grows by cultivation or irrigation. As to the grass which grows naturally without the intervention of the work of the deceased, it will not go to the heirs.

81. On the death of the owner of the vineyards and gardens created, and the freehold (Mulk) buildings erected on Arazi Mirié possessed by Tapu, on which freehold (Mulk) trees and vines have subsequently been planted with the permission of the official (Memour), such trees, vines and buildings, after having been inherited like other property by the heirs of the deceased, the only fee taken shall be succession duty on the assessed value of the sites of such buildings, trees and vines. The land, in proportion to the share of the trees, vines and buildings which falls to each heir, shall be transferred to them gratis, and on the records in the Imperial Defter Khané (133) being corrected, a note will be written in the margin of the title-deeds which are kept (134).

Ownership of vineyards, &c., planted, and buildings erected by deceased tenant.

NOTE.—*The authority of the sentence “a note will be written in the margin of the title-deeds which are kept” written in this article is annulled in accordance with Art. 3 of the Instructions, dated 7. Shaban, 1276, concerning Tapu Seneds.*

82. If mills, enclosures, sheepfolds or other freehold (Mulk) buildings, constructed on Arz Miri held by Tapu, are in ruins and leave no sign of construction, the site of such buildings becomes the right of Tapu. It shall be granted to the owner of the buildings if he ask for it, if not, it shall be given to another. But if such lands shall have previously passed into the possession of the owner of these buildings by inheritance or otherwise, and if he is paying their fixed rent

Disposal of sites of former mills and other erections.

(Ijaréi Maktuaa) to the Government, such lands cannot be taken away from him nor opposition shown to his possession (135). (*See note to Art. 54.*)

Disposal of
sites of
former
vineyards.

83. If any of the trees and vines of gardens and vineyards, created by planting trees and vines freehold (Mulk) on Arz Miri held by Tapu, become dry or are pulled up, and if no traces of them remain, the ground becomes the right of Tapu. It shall be given to the owner of the said trees and vines if he wish it, if not, it shall be given to some other candidate. But if the land of such category was previously inherited from parents or children, or was by other means formerly in the possession of the owner of the trees and vines, it shall not be taken out of the hands of the possessor, nor shall any objection be made to his possessing it (136). (*See note to Art. 54.*)

Devolution
of such
sites.

Disposal
of vacant
pasturages.

84. Any summer (yaylak) or winter (kishlak) pasturage held by Tapu, which without excuse shall not have been occupied during the season for three consecutive years, and of which the dues have not been paid, shall become the right of Tapu (137).

Disposal of
vacant
meadows
held by
Tapu.

85. If a meadow (Chayir) held by Tapu, and on whose produce tithe has been taken *ab antiquo*, remains idle for three consecutive years without excuse, and the grass is not reaped and the tithe is not paid, it becomes the right of the Tapu (138).

86. If at the time when a possessor of the right to Tapu is about to receive the land by paying the Tapu value a stranger presents himself and offers more than the Tapu value, no attention is to be paid to this offer (139). (See Note to Art. 54.)

Paramount
rights of
person
having
right to
Tapu.

87. If, after vacant (Mahlul) Mirié or Mevkufé land has been transferred to a person for its equivalent value (Bedel Misl) ascertained at auction, another person appears and offers a higher price, no interference can be made with the former on the ground that the Sened has not yet been issued, and the land taken over by him cannot be taken away from him. But if, after the vacant land (Arazi Mahlulé) has been transferred to a person, it becomes evident and proved that it has been transferred for a much less price than its Tapu value, such person will be required to complete its Tapu value at the time of transfer within ten years from the date of transfer, and if he does not do so the amount paid by him before will be returned to him and the land transferred to a person who wishes it. If ten years from the date of transfer have elapsed, such person will not be disturbed, and the land taken over by him will not be taken away from him. The same procedure will also be followed with regard to Arazi Mahlulé which has been transferred to a person possessing the right to Tapu (140) for its Tapu value.

Rights of
highest
bidder for
vacant
land.

Acquisition
of title by
lapse of
time.

88. The person employed as a Tapu official in a

Disabilities
of Tapu
official and
of his
relatives.

Kaza cannot during the time of his employment take over vacant land (Mahlulé), or land which becomes the right of Tapu, nor can he hand it over to his children, brother, sister, father, mother, wife, servant, slave and dependents, but if he becomes the possessor of land inherited from his father, mother, or children (141), or if he is the possessor of the right to Tapu he can take over the land in the customary manner through the medium of the Tapu official of another Kaza. (*See note to Art. 54.*)

Disposal of
sites which
are Arz
Miri on
failure of
trustee to
repair.

89. Buildings, the site of which is Arz Miri, and the edifice vakf to an object having become ruined, and after no sign of building remains, if the trustee (Mutevelli) does not repair them and also does not pay the ground rent (Ijaréi Zemin) to the Government, such sites shall be taken out of the hands of the Mutevelli and given to the candidate. If the Mutevelli repairs them or pays the fixed ground rent (Mukatai Zemin) to the Government, he shall not be interfered with, and they shall be left in his hands. The same procedure shall also be followed in places where the site is Arazi Mevkufé and the building vakf to another object (142).

NOTE.—*See Note to Art. 90.*

Disposal of
Arz Miri
sites on
failure of
trustee to
cultivate.

90. Gardens and vineyards, the site of which is Arz Miri, and the vines and trees vakf to an object having become ruined, and after no sign remains of

the trees and vines, if the person who is Mutevelli of the vakf does not cultivate the land without excuse for three consecutive years, and does not bring it back to its original state by planting trees and vines, such lands become the right of Tapu. The same procedure will be followed with places of which the site is Arazi Mevkufé, and the trees and vines vakf to another object.

NOTE.—*It has been notified by a Mazbata of the Mejele Commission approved by Imperial Iradé, dated 22. Muharem, 1300, that in the event of a case between the Beit ul Mal and a Vakf relating to the servitude of the land, the claim of the Muteveli of the Vakf will be heard up to 36 years.*

BOOK II.

CHAPTER I.—ARAZI METRUKÉ.

CHAPTER II.—ARAZI MEVAT.

CHAPTER I.

ARAZI METRUKÉ (144).

Law as to
the cutting
of Baltalik
woods and
forests.

91. The trees of woods and forests called "Baltalik," devoted specially *ab antiquo* for the benefit and for the supply of wood to a town or village, shall be cut only by the inhabitants of such town and village; the inhabitants of no other town and village have the right to cut the wood. The trees of woods and forests devoted specially for the benefit and for the supply of wood *ab antiquo* to several villages, likewise shall be cut only by the inhabitants of such villages; the inhabitants of other villages cannot cut them. There is no tax (145) for this category of woods and forests.

NOTE.—See No. 36. *In accordance with the Regulations, dated 23. Muharem, 1293, Destur, Vol. III., p. 300, if it is ascertained that the woods and forests left to the inhabitants of villages or towns are more than their requirements, and the surplus does not belong to anybody by title-deed, it will be considered as Jibal Mubah and taken under administration. In accordance with Art. 25 of the Forest Law, dated 11. Sheval, 1286, Destur, Vol. II., p. 404, tithe will be taken on the planks cut for trade by the inhabitants of the villages from the said Baltalyks.*

92. Part of the woods and forests devoted specially to the inhabitants of villages cannot be separated and granted to a person by Tapu to be held by him singly or in partnership for the purpose of opening it for cultivation or for making it into a wood. If there be anyone who does so possess a part of a wood or forest, the inhabitants have at all times the power to prevent him from doing so (146).

Public woods and forests not to be enclosed or encroached upon.

93. No one can erect buildings or plant trees on a public road. If anyone does so they shall be demolished or pulled up. In fine, a person can in no wise have possession of the public road, if anyone has he shall be stopped (147).

Law for preservation of highways.

94. Places within or without a town or village, such as places of worship (148) and squares left for the benefit of the inhabitants for assembling their animals or putting their carts, being equivalent to public roads, cannot be bought or sold, nor can buildings be erected or trees planted on them. Nor can they be given into the possession of a single person. If there be anyone who does possess them, the inhabitants can have him ejected (149).

Law for preservation of public spaces.

95. Places registered in the Imperial DeFTER Khané as having been left and assigned *ab antiquo* for market-places and fairs can neither be sold nor bought, nor can Seneds be given to a person for him to possess

Law for preservation of market and other like places.

them by himself. If anyone does possess them he shall be ejected. But whatever tax is registered for places of this category shall be paid into the Treasury (150).

Preservation of public threshing floors.

96. Threshing-floors left and assigned *ab antiquo* to the inhabitants of a village in general, cannot be sold nor cleared and given up to agriculture; it will not be permissible to erect any building thereon, and the possession by Tapu Sened cannot be given to a person singly or in partnership. If anyone does possess it the inhabitants can have him ejected. The inhabitants of another village cannot transport their crops and thresh them on such threshing-floor (151).

Preservation of common pasturage.

97. A Mera reserved *ab antiquo* to a village can only be grazed upon by the animals belonging to the inhabitants of that village; the inhabitants of another village cannot drive animals there. A Mera common *ab antiquo* to the inhabitants of two, three or more villages, can be grazed upon in common by the animals belonging to the inhabitants of those villages: it does not matter in the boundaries of what village it may be, they cannot prevent each other from doing so. Meras reserved *ab antiquo* to the inhabitants of one village only, or in common to the inhabitants of several villages, cannot be bought or sold, enclosures, sheepfolds and other buildings cannot be made on them, they cannot be created into vineyards or

gardens by planting trees or vines. If anyone has erected buildings or planted trees, the inhabitants can at any time have them demolished or pulled up. Permission cannot be given to anyone to break them up for cultivation like other arable land. If anyone cultivates them he will be ejected. They shall remain as Meras (152) always.

98. Whatever may be the *ab antiquo* extent fixed of the land left and considered to be pasture land, this fixed extent of land is called the pasture land, and no regard will be paid to boundaries fixed subsequently (153). Limits of pasture land to be preserved.

99. Whatever may be the number of animals belonging to a Chiftlik situated in a village or town whose animals have pastured *ab antiquo* on the pasture land of that village or town, that number of animals cannot be prevented from pasturing. But pasture lands other than those of the town and village reserved specially *ab antiquo* to this category of Chiftliks are not Arazi Metruké like the pasture lands left and reserved *ab antiquo* to the inhabitants of towns and villages. In Chiftlik pasture lands of this category only the owner pastures his animals, and he can prevent others from doing so. Chiftlik Meras of this kind are possessed by Tapu: they follow the same procedure as other Arazi Mirié (154), and an annual rent equivalent to the tithe is taken for them. Pasturage of Chiftlik not to be trespassed upon.

Regulation
of the
Mera.

100. Whatever may be the number of animals pastured by an inhabitant of the village on the Mera belonging to one village specially or to several villages collectively, he cannot be prevented from pasturing in that Mera the young which are afterwards born of those animals. If this causes crowding to the animals of the inhabitants of the villages, no inhabitant of the village has the right to bring additional animals from outside and pasture them there. A person coming from outside and establishing himself in the village by building a new house (yurd) may bring a few animals from outside and pasture them on the pasture land of that village, on condition that they shall not cause crowding or want of food to the animals of the inhabitants of the village. Whatever may be the number of animals pastured by an inhabitant of the village on the pasture land of that village, the person who subsequently buys the house (yurd) of that person cannot be prevented from pasturing that number of animals also there (155).

Exclusive
use of
assigned
yaylaks
and kish-
laks.

101. Only the inhabitants of the villages to which they are assigned shall benefit by the grass and water of yaylaks and kishlaks, assigned *ab antiquo* to the inhabitants of one sole village, or of several villages, and registered in the Imperial Defter Khané, and the inhabitants of other villages, being strangers, cannot benefit therefrom. Yaylakié and kishlakié taxes are taken for the Treasury from the persons, according to

their means, who profit by the grass and water of yaylaks and kishlaks of this category. And these yaylaks and kishlaks assigned to the inhabitants cannot be bought or sold. And they cannot be granted into the possession of a person singly. And they cannot be cultivated without the consent of the inhabitants (156).

102. Attention will not be paid to prescription in cases regarding Arazi Metruké such as Woods, Forests, Public Roads, Fair and Market Places, Threshing-floors, Meras, Kishlaks, and Yaylaks which have been left and assigned *ab antiquo* to the inhabitants (157).

No title to be acquired by lapse of time in respect of public places.

CHAPTER II.

ARAZI MEVAT* (158).

Disposal of
unoccupied
lands.

103. Empty (khali) places, such as Otlak (160), Pernallik (43), kiraj (159). Tashlik (stony place), and Kuhi (hill), which are not in the possession of anybody by Tapu (160), and which *ab antiquo* are not assigned to the inhabitants of towns and villages, and which are distant from a town and village, so that the loud voice of a person cannot be heard from the extreme inhabited point, are Arazi Mevat; this category of land can be opened up newly and created into arable land, with the permission of the official, gratis by the person having need for it, on condition that its servitude shall belong to the Treasury (Beit ul Mal), and all the provisions of the law in force concerning other cultivated land are applicable to lands of this category also.

But if a person does not open up the place which has been taken and transferred to him with the permission of the official in order to be opened up as

NOTE.*—*The provisions of the religious law in force regarding the mode of re-vivification of Arazi Mevat are given in Book 10 of the Mejele "Societies."*

aforesaid, and leaves it for three years in its past state without valid excuse, it shall be given to another. If anyone has opened up and created into arable land any of this category of land without permission, the Tapu value of the place opened up by him shall be taken from him, and a Tapu Sened (161) shall be given on its being transferred to him.

104. Everyone may cut wood and planks from the mountains and "balkans" called Jibal Mubah, which are not woods and forests assigned to the inhabitants *ab antiquo*, and they cannot interfere with each other; and tithe is not taken on the herbage and cut trees coming from these. And a portion of this species of Jibal Mubah cannot be separated and granted by the official into the possession of anybody, to be held by him solely or in partnership (162) by Tapu in order to be created into a wood.

Right of public to cut wood on mountains and hills not assigned

NOTE.—*The authority of this article has been modified by the Forest Law dated 11. Sheval, 1286.*

105. If there be a grass land (otlak) within the boundaries of a village besides the pasture land assigned to the inhabitants of towns and villages, the inhabitants of that village can graze their animals and benefit by the grass and water without paying any tax. A grass land tax (resm otlak) of a suitable amount will be taken for the Treasury from persons bringing animals from outside, and wishing to profit by the

Right of public to use unassigned grass-land.

grass and water of that grass land, and the inhabitants of the village have not the power to prevent them, nor do they take any share in the tax paid (163).

NOTE.—*In accordance with Art. 43 of the Forest Law, a fine of 1 piastre per head will be taken from the shepherd who drives animals without the permission of the official to Meras on restricted parts of Government Forests. The procedure to be followed in the event of the animals driven to these Forests not belonging to the inhabitants of a village is given in Art. 45 of the said law.*

BOOK III.

MUTEFERIAT.

106. Trees growing naturally on Arazi Mevat, ^{Ownership of trees.} Metruké, Mirié, Mevkufé, and Memluké cannot be held by Tapu. But trees growing naturally on Arazi Mirié or Mevkufé are held in subjection to the land, as stated in the chapter on possession (164) (Tesarruf).

NOTE.—*In accordance with the Forest Law, dated 11. Sheval, 1286, Destur, Vol. II., p. 404, all the Forests are divided into four classes :—*

1. *Government Forests.*
2. *Forest's attached to Vakfs.*
3. *Baltalyks assigned to Towns and Villages.*
4. *Woods belonging to individuals.*

The Government Forests are administered in accordance with the said law, the regulations concerning the administration of Erkaf Forests are also given in the Karar namé, Destur, Vol. IV., p. 417, and the regulations dated 23. Muharem, 1293, with regard to the examination of title-deeds for forests claimed by individuals are given in Destur, Vol. III., p. 300.

107. Gold, silver, copper, iron, diverse stones, gypsum, sulphur, saltpetre, emery, coal, salt, and other ^{Ownership of metals and minerals.} mines appearing on Arazi Mirié, in the possession of whomsoever it may be, belong to the Beit ul Mal: the possessors have no right to take possession of

Ownership
of metals
and miner-
als.

any mine or to have any share in the minerals got out. Likewise all mines appearing on the "Takhsisat" (165) category of Arazi Mevkufé belong to the Beit ul Mal: they cannot be interfered with by the owner of the land or on behalf of the vakf. But it is necessary that the owner should be given the value of the amount of land which it is necessary to leave idle by working the said mines, whether they be on Arazi Miri or on the aforementioned Arazi Mevkufé. One-fifth of the mines found on Arazi Metruké and Arazi Mevat belong to the Beit ul Mal, and the remainder belongs to the person who finds them. But mines appearing on real vakf land belong to the vakf, and mines appearing on Mulk Arsas within villages and towns belong entirely to the owner. One-fifth of the minerals which are capable of melting found on Arazi Ushrié and Kharajié belong to the Beit ul Mal, and the remainder to the owner of the land and minerals which are not capable of melting belong entirely to the owner^(a) (166). The procedure with regard to ancient and new coins and diverse treasures of which the owner has no knowledge found on all land is explained in the books on religious law (kutb fikhié) ^(b) (167).

Treasure
trove.

NOTE.(*)—*Though it is fixed by the Law on Mines, 2. Shaban, 1285, Destur, Vol. II., p. 318, the said law has been abrogated by the subsequent Law on Mines, dated 18. Zilhijé, 1304, which has been substituted in its place, and which is published in No. 411 of the Courts Journal.*

^(b) *Matters relating to excavations and search for coins, &c., of*

this kind are fixed in the Law on Antiquities, dated 20. Safer, 1291, Destur, Vol. III., p. 426, the authority of which has been abolished and replaced by the Law on Antiquities, dated 22. Rebi ul akhir, 1301, p. 89. Appendix to Destur, Vol. IV.

108. The land of a person murdered cannot pass by inheritance to his murderer. The murderer cannot likewise have the right to Tapu (168) in the land of the murdered.

Forfeiture
by murder-
er.

NOTE.—See No. 28.

109. The land of a Mussulman cannot pass by inheritance to his children, father or mother non-Mussulman; the land of a non-Mussulman cannot pass by inheritance to his children, father or mother Mussulman; a non-Mussulman cannot have the right to Tapu in the land of a Mussulman, and a Mussulman cannot have the right to own in the land of a non-Mussulman (169).

No inheri-
tance as
between
Mussulman
and non-
Mussul-
man.

110. The land of an Ottoman subject does not pass by inheritance to his children, father or mother who are foreign subjects, and a foreign subject cannot have the right to Tapu in the land of an Ottoman subject (170).

Disability
of foreign
subjects as
to land.

111. The land of a person who has abandoned the Ottoman nationality does not pass by inheritance to his children, father or mother who are Ottoman or

Disability
of all who
abandon
the Otto-
man na-
tionality.

foreign subjects. It becomes vacant by the act, and without seeking the possessors of the right to Tapu it is put up to auction and given to the candidate (171).

NOTE.—*The authority of this article has been modified by the law dated end of Jemaziul evel, 1284, concerning foreign subjects becoming possessors of property.*

Legal
rights and
position of
slaves as
to land.

112. The master of any slave who shall have acquired land with the permission of his master, and through the official, before or after being liberated, cannot take such land from him and he cannot interfere with it in any way, and if his master die before the slave's liberation the master's heirs likewise cannot interfere with such land. If a slave die before being liberated nobody shall inherit such land, and if there are no freehold (Mulk) buildings or trees on such land nobody but his partner, relation, or an inhabitant of the village having need of it shall have the right to Tapu; if there are on it freehold (Mulk) buildings and trees his master shall have preference over others, and during ten years he shall have power to take it for its Tapu value. If a slave die after having been liberated his land passes by inheritance to his children, father or mother, who are free. If there are none of these, if there are on it no freehold (Mulk) buildings or trees, neither the person who gave him freedom nor his children shall have the right to Tapu, but it shall be given for

its Tapu value to the possessors of the right to Tapu being his own relations and who are free, if any: if none, by auction to the candidate. If there be on it freehold (Mulk) buildings and trees, it shall be given for its Tapu value to the possessor of the right to Tapu, being one of the heirs who has inherited such freehold (Mulk) buildings and trees (172). (*See note to Art. 54.*)

113. The alienation of Arazi Mirié and Mevkufé by force and constraint by a person capable of being intimidated is not valid. If a person has alienated to another the land acquired by him by force and constraint, or if he has fled and it has passed by inheritance to his children, father, or mother, or if there are none of these and by his death it has become vacant (Mahlul), the alienor (by force and constraint), and after his death his children, father, or mother have power to take action on account of force. If he die without an heir having the right of inheritance (Hak Intikal) the land is not considered vacant (Mahlul), and it remains in the hands of the person who holds it (173). (*See note to Art. 54.*)

Alienation
got by
force,
threats,
&c., void-
able.

114. The alienation and transfer of Arazi Mirié or Mevkufé with conditions considered illegal by the Sheri (religious law), such as seeing, taking care, and causing a person to live comfortably until his death, is not valid; if a person has alienated to another the land

Alienation
with illegal
conditions
voidable.

acquired on these illegal conditions, or if he has died and it has passed by inheritance to his children, father, or mother, the first alienor, or if he is dead, his heirs having the right of inheritance have power to bring an action on account of illegal conditions (174).

This Article has been replaced by one dated 18. Safer, 1306.

Land cannot be seized for debt.

115. The creditor cannot seize the land owned by a debtor in exchange for his debt, and he has not the power to force him to alienate it to another and to pay the debt out of its value; and on the death of the debtor, whether he has other property and goods or not, the land possessed by him passes by inheritance to his heirs, if any, having the right of inheritance: if none it becomes the right of Tapu and is granted for its Tapu value to the possessor of the right to Tapu, if any: if none by auction to the candidate (175).

NOTE.—*The provisions of this article contrary to the law dated 27. Shaban, 1286, concerning the sale of immovable property, are abolished.*

Arazi Mirié and Mevkufé not to be mortgaged.

116. Arazi Mirié and Mevkufé cannot be mortgaged (Rehn). But if a person alienates the land owned by him, in opposition to this debt, to his creditor, through the official, on condition that whenever he pays his debt it shall be returned to him, or by Feragh bil vefa, meaning that whenever he pays his debt he shall have the right to claim restitution, whether the time has been fixed or not: without paying his debt, he

Conditional alienation valid.

cannot claim the restitution of such land, and when he has entirely paid his debt he can take back his land (176).

NOTE.—*The mode of carrying out Mortgage (Feragh bil vefa) stated in this 116th Article is given in Art. 26 of the Tāpu Law.*

117. If a person who has alienated the land owned by him to another in opposition to his debt, with the foregoing condition or by way of Feragh bil vefa, and up to such a time cannot pay the debt, if he makes his creditor his Vekil by Vekialet Devrié (177), that is to say, at whatever time he dismisses him from being Vekil he is to be his Vekil again to alienate or cause to be alienated such land to another for its equivalent value (Bedel Misl), and after deducting his debt from the value to deliver the balance to the debtor, and if by the expiration of the time fixed the debtor has not been able to pay the debt, the creditor can during the debtor's lifetime alienate or cause such land to be alienated through the official for its equivalent value (Bedel Misl) and pay his debt; and if, as aforesaid, he makes some one else from outside as his Vekil, such person also, at the expiration of the time fixed, as Vekil as aforementioned, shall sell such land to another and pay the debt of the debtor from its value (178).

Land may
be sold to
pay debt.

118. If a debtor who has alienated his land to his creditor, on the condition previously stated or under

Land
chargeable
with debt
in hands of
heir.

the form of vefa, die before entirely paying his debt, leaving children, father, or mother, the creditor, or if he be dead all his heirs have the right to attach such land, and the children, father and mother of the debtor without entirely paying the debt cannot take possession of the land which has passed to them by inheritance. If the debtor die without heirs having the right to inheritance his creditor, or after his death his heirs, have no right of attachment, and the land follows the procedure of other vacant land (179) (Mahlulat).

NOTE.—*The provisions of this article opposed to the law dated 23 Ramazan, 1286, concerning the conditions fixing Arazi Mirié and Mevkufé and Musakafat and Musteghillat Vakfié, satisfying debt after the death of the debtor, are abolished.*

Action as
to land
cannot be
continued
by heirs.

119. Actions for fraud between alienors and alienees in all Arazi Mirié and Mevkufé will be heard, but after the decease of the alienor his children, father or mother have no right to action, and the land cannot be considered Mahlul (180).

NOTE.—*It is one of the provisions of the Vezirial letters, dated 25. Ramazan, 1292, and 20. Ramazan, 1296, that disputes of this nature will be heard in the Nizam Courts.*

Validity of
alienation
by tenant
in articulo
mortis.

120. The alienation of land Mirié and Mevkufé made in a state of mortal illness is valid, and the land thus alienated with the permission of the official

does not pass by inheritance to the heirs having the right of inheritance, nor, if there are none, does it become the right of Tapu (181). *Donatio mortis causâ.*

121. A person cannot make the land he possesses Vakf to any object (182) without its being put into his actual possession by an Imperial Mulknámé from the Sultan. Tenant cannot make Vakf.

122. Land attached *ab antiquo* to a monastery and of which the attachment is registered in the Imperial Defter Khané cannot be possessed by Tapu and it cannot be bought or sold; but concerning land which has *ab antiquo* been held by Tapu, and which has subsequently by some means passed into the hands of a monk, and which is being possessed without Tapu as being attached to a monastery, the same procedure as with regard to other Arazi Mirié is followed, and as before it is caused to be held by Tapu (183). Inalienability of land held to religious uses.

123. When land capable of cultivation comes to light by the waters of an *ab antiquo* lake or river receding, it is put up to auction and given to the candidate, and it follows the same procedure as other Arazi Mirié (184). Reclaimed land to be sold by auction.

124. In disputes about the right of drinking and irrigating water and water channels, consideration is paid only to the *ab antiquo* rights (185). Preservation of ancient rights.

Protection
of fields,
vineyards,
gardens,
&c.

125. It is not lawful to allow animals to graze in fields called Kyuk Terke, vineyards, and gardens. If they have been allowed to graze *ab antiquo* the damage cannot be eternal. The owners will be warned to keep a firm control over their animals until the crop is removed. If, after warning, the animals do damage by being sent by their owners, the latter will be made to pay compensation. After the crop has been removed, the animals will be allowed to graze again in such parts of such lands as they have been allowed to graze in of old.

NOTE.—*As the inhabitants have the right to pasture their animals after the first crop has been removed from the land, a letter has been sent from the Ministry of Justice, dated 12. Rebi ul Akhir, 1305, stating that in the event of an application to the Courts to stop them they should not be prevented from pasturing in accordance with this article.*

Restoration
of ancient
boundaries.

126. If the distinguishing and fixed ancient boundaries of a town or village have been spoilt or are not recognisable they shall be gone over with persons aged and trustworthy from among the inhabitants of the neighbouring towns and villages, and the ancient boundaries shall be defined through the Sheri and the necessary marks renewed (188).

NOTE.—*In accordance with the Imperial Iradé notified by Vezirial letter, dated 20. Ramazan, 1296, boundary disputes will be heard in the Nizam Courts.*

Tithes,
taxes, &c.

127. The tithe of all crops shall only be considered as due by the village within the boundaries of which

the land on which they are grown is situate, no matter where they may be threshed (189). Likewise the fixed rents and taxes of yaylaks, kishlaks, otlaks (190), enclosures, mills, &c., shall only be considered as due by the village within whose boundaries they are situate.

NOTE.—*The provisions of this 127th Article have been confirmed by Art. 4 of the Tithes Law, dated 16. Shaban, 1304, contained in Nos. 396-398 of the Courts Journal, the tithe to be taken in kind or money on all crops on the land, the mode of farming the tithes, and the duties of officials appointed have also been fixed.*

128. If in places registered in the Imperial Defter Khané as rice fields the stream supplying these rice fields with water gets destroyed, the persons sowing the fields shall be made to repair the stream. The land of rice fields is held by Tapu like other Arazi Mirié. But whatever the local procedure in force *ab antiquo* with regard to rice fields may be, it shall be respected.

Works for
irrigation
to be pre-
served.

129. Land which was before the Tanzimat assigned to Sipahis and others called khassa (191), and that reserved to the abolished system of Vinghana (193), called Bashtina (192), and that given by Tapu by the abolished Koru Agas, shall be possessed by Tapu, and in case of alienation, inheritance and transfer, it shall follow exactly the same procedure as other Arazi Mirié.

Extension
of Tapu
system.

NOTE.—*The mode of examining the Title-Deeds held by owners claiming the possession of Woods, is given in the Regulations Destur, Vol. III., p. 300.*

Chiftlik,—
when to be
created.

130. The land of an inhabited village cannot be given to one person independently in order to make a Chiftlik (194); but, as stated in Art. 72 (195), if all the inhabitants of a village are scattered, and the Tapu has acquired the right to its lands, if it is not possible to bring back that village to its original state by bringing fresh agriculturists to live there, and conferring on them the land separately, the land can be given in lots to one, two or three persons in order to make that village into a Chiftlik.

Definition
of Chiftlik.

131. By law Chiftlik means a place which is cultivated by means of a pair of bullocks and gives produce every year, and consists of about 70 to 80 donums of superior, 100 donums of middling, and 130 donums (196) of inferior land. A donum is a place of 40 square paces of medium length, that is 1600 ziras square, and lands of less than one donum are called kita (piece). But among the people the place called Chiftlik consists of the land and buildings, animals, seed, farm implements and other appurtenances, built and got together in the cultivation of a lot of land. If a possessor of a Chiftlik of this category dies

Devolution
of Chiftlik.

without any heir or persons possessing the right to Tapu, it is put up to auction by the Government, and given to the candidate. If he dies without an heir having the right of inheritance (Hak Intikal), and the said buildings, animals, seed, &c., pass by inheritance to the other heirs, as is stated in the

chapter on Mahlulat (197), these heirs shall have the right of Tapu to the lands possessed and cultivated in subjection to that Chiftlik, and the said land shall be conferred on them for its Tapu value. If they abstain, without touching the property (Emlak) and goods inherited by them, only the said land shall be conferred by auction on the candidate (198).

NOTE.—*In accordance with Art. 3 of the Law dated 7. Muharem, 1293, Mussulman and non-Mussulman subjects who are cultivators in Chiftliks, have preferential rights at the time when lands sold by auction or alienated by private individuals are being received.*

132. Whoever by permission of the Sultan converts into property (Emlak) a portion of the sea, he becomes owner of that place. If he gets permission and does not fulfil it in three years he has no further right, and by permission of the Sultan another can make that place into his property. If a person without permission fills in a portion of the sea, such place belongs to the Beit ul Mal and shall be sold to such person for its equivalent value (Bedel Misl); if he abstains, it shall be sold by auction to the candidate (199).

Land re-claimed from the sea.

CONCLUSION.—This Imperial law shall be in force from the date of its promulgation, and the provisions contrary to its contents of supreme orders issued anciently or recently up to now concerning Arazi Mirié and the Takhsisat category of Arazi Mevkufé

Operation
of law.

(200) shall be annulled, and the Fetvas which have been given by the Shiekhs-ul-Islam (201) based on the said orders shall not be acted upon, and hereafter only this Imperial Law shall be in force in the Sheikh-ul-Islamate, Government Offices, and in all the Courts and Councils. And the old laws concerning Arazi Mirié and Mevkufé in the office of the Divan Humayun (202), in the Imperial Defter Khané, and in other places (203), shall not be respected.

7. Ramazan, 1274.

APPENDIX APPROVED BY IMPERIAL IRADÉ.

Actions by others claiming the possession of Arazi Khalié Mahlulé which the Government has conferred on immigrants, and which has been cultivated or on which buildings have been made by the latter, will not be heard after two years have passed without excuse.

4. Jemazi ul evel, 1305.

12. January, 1303.

Courts Journal, No. 429.

II. TAPU LAW (1) (2).

COPY OF IMPERIAL KHAT.

“LET BE DONE ACCORDINGLY.”

1. The Mal Memours, that is to say, the Defterdars, Authority of Mal Memours. Malmudirs, and Kaza Mudirs, being authorised to confer Arazi Mirié in the provinces, they are in the position of the owner of the land (3).

NOTE.—See Note (b), Art. 3 Land Law.

2. The Mudirs of Agriculture have no special concern in matters of alienation, inheritance, and transfer Limit on power of Mudirs. of the said land, and they will only have the same authority as other members in their quality of members of the Council (4).

3. When a person desires to alienate his land to another, he must get a certificate bearing the seals Formalities of alienation. of the Imam and Mukhtar of his quarter or village, stating that he is really the owner of such land, the true amount of how many piastres he is going to alienate it for, the Kaza and village in which it is situate,

Mode of
convey-
ance.

its boundaries, and the number of donums. When the alienor and alienee, or their legal agents, come to the Mejlis of the Country, the certificate brought by them will be taken and kept, and after the fees of the alienation have been paid, their statements will be taken in the presence of the Mudir of the Country if it is at the head-quarters of a Kaza, and the Mal Memours if it is at the head-quarters of a Liva or Vilayet; and the process of its registration will be carried out, and the title-deed in hand will be taken, if at the head-quarters of a Kaza and sent with a Mazbata and the said fees to the head-quarters of the Liva, to which it is attached, in order to have an annotation written in the margin, or, if it is an old one, for it to be changed and the old one kept. There the Mazbata of the Kaza will be kept and the registration carried out, and in accordance therewith another Mazbata will be prepared and sent to the Defter Khané. If it is at the head-quarters of the Liva, the Mazbata will be at once prepared and sent to the Defter Khané. If the alienor has no old title-deed, the nature of his possession should be stated in the Mazbatas prepared as above.

Registra-
tion.

NOTE.—*The authority of the sentences in this and the following article, which are contrary to Arts. 2 & 3 of the instructions dated 7. Shaban, 1276, concerning Tapu Seneds, are abolished.*

4. When a person is about to alienate his land in the country to a person living at Constantinople, a

Mazbata stating that he is actually the owner must be brought from the Mejlis of the Sanjak in which the land is situate, and the alienor and alienee or their legal agents will attend at the Defter Khané (5), and after their statements have been taken as stated in the preceding article, if the alienor has a new Tapu Sened a marginal note will be written, if not, a new one will be given. On the delivery of every title-deed a certificate will be sent from the Defter Khané to the locality in order that the registration may be made there. (*See note to Art. 3.*)

Mode of conveyance when purchaser lives at Constantinople.

5. In the event of inheritance, the fees that will be taken from the person having the right of inheritance in accordance with the sealed certificate given by the Imam and Mukhtar of his village or quarter stating that the land of the deceased which is about to be inherited was really his property, its estimated value, and that in accordance with Arts. 54 & 55 of the Land Law (6) (^a), the right of inheritance only belongs to the person to whom it is about to be carried out, together with the Mazbata, will be sent to the Defter Khané, as stated in Art. 3, and the inheritance will be carried out (^b).

Formalities and fees upon succession.

NOTE.(^a)—The sentence, “In accordance with Arts. 54 & 55 of the Land Law,” in this article has been changed by the law dated 17. Muharem, 1284, concerning the mode of inheritance of *Arazi Mirié*.

(^b) In accordance with the Instructions (No. 4), the system of

inheritance is carried out locally, and printed Kochans are given to the owners.

Duty payable upon sale or mortgage.

6. At however many piastres the land may be alienated, a fee of five piastres per hundred is taken from the alienee. But if a person understates the price of the land in order to pay less fees on alienation, the value shall be ascertained by a person free from bias and corruption, and the said fee shall be taken on its estimated value. Half fees shall be taken from the person who mortgages (Vefaen Feragh) (7) his land for debt, that is to say a fee of two and a half piastres per hundred on the amount of the debt.

NOTE.—See No. 29.

Duty payable upon exchange.

7. In an exchange of land (8) the estimated total value of both lands shall be divided and a fee of five piastres per hundred shall be taken, but the one-half of this fee shall be paid by the one and the other half by the other exchanger of the land.

Duty payable upon succession.

8. In inheritance the person who is about to inherit the land shall likewise pay an inheritance fee of five piastres per hundred on the estimated value of the land.

Fee payable for title-deed.

9. Besides the alienation and inheritance fees that shall be taken in accordance with the above, when a new title-deed is issued three piastres' cost of paper

shall also be taken in alienation from the alienor, and in inheritance from the inheritor.

NOTE.—*In accordance with the new system, cost of paper is not taken from the alienor.*

10. When a person is about to alienate to another the land of which the inheritance has not yet been legally carried out to him, five piastres per hundred shall be taken from each of them, as inheritance fee from the alienor and as alienation fee from the alienee, and in case a new title-deed has been issued three piastres cost of paper shall also be taken from the alienor (9). Duty payable when vendor has inherited.

11. On a certificate from the village or quarter, and the necessary inquiries, that new title-deeds should be issued, a Mazbata will be drawn up, and sent, together with the certificate, to the Defter Khané, on payment of the following fees :— New title-deeds.

i. Inheritance and cost of paper, by persons who hold land, other than vacant or concealed (10), without title.

ii. Cost of paper, by persons who have old titles issued by Sipahis, Multezims, &c. (11), and by persons who prove, by the registers, that they have lost their title-deed (12).

NOTE.—*For the examination of Title-Deeds issued regarding Woods see the Regulations, Destur, Vol. III., p. 300. The matter of renewal of Title-Deeds is fixed in Art. 1 of the Tapu Regulations (No. 3).*

Title-deeds of waste-lands. 12. As stated in Art. 103 of the Land Law, waste lands (Boz and Kiraj) shall be given and new titles issued gratis and without fee to persons who newly open them up and make them into arable land; only three piastres' cost of paper shall be taken. Tithes shall not be taken for one year on this category of land (Boz and Kiraj), and for two years if the land opened by them is stony (Tashlik) (13).

Immunity of waste-lands from tithe.

Waste-lands not to be appropriated except under special conditions. 13. Arazi Mevat is given in the foregoing manner to persons who desire it for agriculture and improvement only. It is the duty of Valis, Kaimakams, Kaza Mudirs, and Mal Memours, not to allow persons to take it with other supposition, and especially not to allow title-deeds to be given and possession granted to persons for places which have been left and assigned to the public benefit, and Jibal Mubah (mountains) (14), and to cause the land which becomes the right of Tapu by non-cultivation, to be cultivated.

NOTE.—See Note (b), Art. 3, *Land Law*.

Contents of printed Tapu Seneds. 14. In the printed Tapu Seneds with the Tughra at top given to the owners of land stating the nature of their holding, the Kaza and village in which the land is situate, and its boundaries and number of donums shall be stated, and it shall be sealed with the special seal of the office entrusted with the register.

15. The conditions contained in the Mulknamés

will be carried out concerning Chiftliks which are being held by Imperial Mulksamé (15).

Conditions to be applied to Chiftliks.

16. If the possessors of the right to Tapu are not forthcoming the land which is the right of Tapu shall be offered in turn to the possessors of the right to Tapu, as stated in Art. 59 of the Land Law, for the value assessed locally, that is to say, by ascertaining from the inhabitants of the town or village in which the land is situate, who are disinterested possessors of knowledge, and if it does not cause loss and injury to the Treasury. If they are candidates it shall be conferred upon them without being put up to auction, and the necessary Mazbata drawn up. If the land in question is less than one hundred donums, the inquiries of the Kaza Mejlis (16) shall be sufficient, but if it is more than one hundred donums, the inquiries of the Kaza Mejlis shall not be sufficient, and after the necessary inquiries have also been carried out by the Liva Mejlis (17) the transfer shall be carried out also without auction. Care must be taken that the Tapu of this land is not delayed, and that the rights of the possessors of the right to Tapu are not lost on account of these inquiries (18).

NOTE.—*The authority of this article, contrary to the law dated 17. Muharem, 1284, concerning the mode of inheritance of Arazi Mirié is abolished.*

17. If the possessors of the right to Tapu lose their

Declaration of abandonment. right by refusing to take for its Tapu value the land to which they have a right to Tapu, the circumstance of their refusal will be stated in the Mazbata that will be drawn up in order that the land may be given to the candidate at auction as follows. (*See note to Art. 16.*)

Disposal of pure Mahlul.

18. Land which has become pure Mahlul (19), and which in accordance with Art. 77 of the Land Law, it is necessary should be conferred by auction on another on account of there being no possessors of the right to Tapu, or if there are any, and they abstain from taking the land to which they have the right to Tapu and lose their right, will be conferred on the candidate for the price settled by auction by the Kaza Mejlis, if up to one hundred donums, and its auction again by the Liva Mejlis, if from one hundred to five hundred donums, and the necessary Mazbata will be prepared. If it is more than five hundred donums after the auctions at the Kaza and Liva Mejlises have been carried out, the matter should be communicated to the Ministry of Finance, in order that another auction should be held at the Imperial Treasury of Finance also. The auctions of this category of Mahlulat shall be completed at most within three months from the date of the arrival of the Mazbatas at Constantinople. The possessors of the right to Tapu have been stated at length in the Land Law, but the Tapu rights of inhabitants who have need of

land, and who are comprised in the last degree of rights to Tapu being confined to the amount of separated land to which they have need, in matters of large parcels of land which it would be injurious to separate and divide, and Chiftlik lands, the right to Tapu is valid only up to the eighth degree stated in Art. 59 of the said Law. (*See note to Art. 16.*)

NOTE.—*Superseded by fresh article, approved by Imperial Iradé, dated 27. Sheval, 1303.*

19. The Muajelat of Arazi Mahlul, and the alienation and inheritance fees to be taken as described before, and the cost of paper, shall all belong to the Imperial Treasury.

Application of Muajelat and of fees.

20. Whoever other than the land officials gives notice of concealed Arazi Mirié and Mevkufé, the Mahlulship of which has not been directly heard of by the Government, will be given a reward of ten piastres per hundred on the Bedel Muajel after it has been sold by auction by the Mejlis.

Reward to informer as to concealed Mirié and Mevkufé.

NOTE.—*See No. 30.*

21. On the alienation, inheritance, and conference of land as above, after the fees of alienation or inheritance, or the Muajel have been paid no time should be lost in getting or delivering the title-deeds. In order that the new owner may at once possess and cultivate the land, a certificate sealed with the seal of the Mejlis

Title-deeds to be drawn at once.

Certificate shall be given to him to be considered as valid until
 pending the arrival of the title-deed.
 making of title-deed.

NOTE.—*In accordance with the instructions dated 7. Shaban, 1276, concerning Tapu Seneds, the authority of the sentence, "a certificate sealed with the seal of the Mejlis shall be given," is no longer in force.*

Registration. 22. A separate land register for each Kaza shall be kept at the head-quarters of the Liva, and in the event of alienation, inheritance, or conference, the process of registration shall be carried out.

Transmission of Mazbatas. 23. The Mazbatas drawn up for the title-deeds of land will be put in a separate envelope and sent by the post direct to the Defter Khané. But it shall also be permissible for the person to whom the land is going to be passed to take the Mazbata himself and present it to the Defter Khané.

Hearing of actions for fraud. 24. Actions for fraud in Arazi Mirié being current, actions of this kind which are tried by the Sheri shall be heard in the presence of the Mal Memours or their agents who are considered as the owners of the soil.

NOTE.—*In accordance with Imperial Iadé communicated by letter from the Ministry of Justice, dated 20. Ramazan, 1296, actions with regard to land and boundaries will be heard in the Nizam Courts. And in accordance with Vezirial letter, dated 20. Zilnié, 1290, the Defter Khané and Tapu officials will be present during trial as owners of the soil.*

CHAPTER I.

CONCERNING THE MORTGAGE (VEFAEN FÉRAGH) BY
THE OWNER OF ARAZI MIRIÉ IN OPPOSITION TO DEBT.

25. As stated in the Imperial Land Law, the mortgage (Vefaen Féragh) of Arazi Mirié by the owner in order to secure debt is lawful and current, but if the mortgagor dies without heirs having the right to inheritance, the creditor cannot seize such land in opposition to his claim, and though by law it is necessary that such land should become the right of Tapu as, solely for the public benefit, Imperial permission was given on the 9. Ramazan, 1274, that the creditor may recover his debt from the value of such land, the conditions which it is necessary should be followed for the mortgage (Vefaen Féragh) of land are stated below.

Legal position of mortgagee of Arazi Mirié.

NOTE.—*The authority of this article, contrary to the law dated 23. Ramazan, 1286, concerning conditions appointing Arazi Mirié and Mevkufé and Musakafat and Musteghillat Vakfié to satisfy debt after the death of the debtor, is abolished.*

26. If an owner of Arazi Mirié wishes to borrow money by mortgaging (Vefaen Féragh) the land in

Formalities of mortgage.

his possession by Tapu in order to secure the creditor, both parties, i.e. creditor and debtor, or their representatives shall come to the Kaza Mejlis if in a Kaza, or to the Liva or Ayalet Mejlis if in a Liva or Ayalet, and on stating and explaining in the presence of the Mal Memours the amount and boundaries of the land, the amount of the capital and interest (which should not go beyond the limit authorised by Government), and that it has been mortgaged (Féragh bil Vefa); it will be bound in an official deed, and the Tapu Sened in hand will be delivered on trust to the mortgagee, and the resumé will be entered in the special register kept for this purpose, and when the said debtor wishes to relieve his land by settling the debt, in the same way both parties shall come to the Mejlis of the Country and the Deed and Tapu Sened will be restituted, and the entry in the register shall be amended.

Mortgage
to be regis-
tered.

Mortgagee
not to
assign.

27. When a mortgage (Vefaen Féragh) as above takes place, neither the mortgagor nor the mortgagee can alienate that land to another; but if, as stated in Art. 117 of the Land Law, a period has been fixed, and if during the fixed period the mortgagor is unable to pay the debt, in order to pay the debt from the value of the land by its sale, the mortgagee, or if a person from outside has been made Vekil by Vekialet Devrié, then at the expiration of the fixed time, the person who is Vekil, may through the official recover the debt from the value of the land by selling it by

Power of
sale.

public auction for from fifteen days to two months at most, according to its value and size. In such case the circumstance of this Vekialet Devrié should be stated in the Official Deed mentioned in the preceding article. If it has not been stated, a Vekialet Devrié action will not be considered (29).

28. When a person dies after having mortgaged (Vefaen Féragh) through the official, in accordance with the above, the land which he possesses by Tapu to his creditor in opposition to his debt, and before paying the debt, the said debt shall be recovered like other debts from his estate, and if he has no estate, or if his estate is not sufficient for his debts, the children, father or mother of the deceased shall not be able to hold such land without entirely paying the said debt, and the creditor has the right to prevent them from holding such land until the complete recovery of the said debt. And if the deceased has no heir having the right of inheritance but has a possessor of the right to Tapu, in this case the known Tapu value shall not be sought for, but if the possessor of the right to Tapu is willing to have it conferred on him for whatever price it fetches at auction, it shall be given to him for that price, and an amount equal to one year's crop of the said land shall be kept for the Beit ul Mal from the money received in opposition to the Tapu value, and with the remainder the said debt which has not been paid by the estate of the deceased shall be paid.

Procedure
when mort-
gagor has
died.

Procedure
upon death
of mort-
gagor.

And if the possessor of the right to Tapu refuses to take the land for such price, or if the deceased has no possessor of the right to Tapu, the land shall be given to the candidate for the price settled at auction, in which case an amount equal to one year's crop shall also be kept from the said price for the Beit ul Mal, and the said debt shall be paid with the surplus (30).

NOTE.—*The provisions of this article contrary to the law dated 23. Ramazan, 1286, concerning conditions appointing Arazi Miriê and Mevkufê, and Musakafat and Musteghillat Vakfiê to satisfy debt after the death of the debtor, are abolished.*

Mortgagee
cannot
come upon
other lands
of the
mortgagor

29. In all of the above cases, if the price of the land does not cover the debt, as the creditor has no power to claim the balance of his debt from anywhere else or to recover it from the value of the debtor's other lands which are not registered in the said Deed and register, after one year's produce has been deducted from the equivalent value (Bedel Misl) of the land which will be mortgaged (Vefaen Féragh) in opposition to the debt, the remainder must be considered as equal to the said debt, and the alienation of land in opposition to more debt (31) shall not be carried out.

Mortgage
must be by
deed.

30. If the creditor and debtor do not respect the rules stated above, and make a Deed between themselves alone, it will not be respected at any time.

Actions on account of mortgage (Féragh bil Vefa) Actions as to mort-
 will be heard by the local Mejlis (32) in accordance gage.
 with the entry in the register and the official
 Deed mentioned above, in the presence of the Mal
 Memour (33).

NOTE.—*See Note to Art. 24.*

CHAPTER II.

CONCERNING THE CHIFTLIKS OF ORPHANS.

Chiftliks
of orphans.

31. Chiftliks of the category known as such among the people, that is buildings, animals, oxen (Chift), vineyards, and other properties, and the whole arrangement including the Arazi Mirié cultivated in subjection to these, belonging by inheritance to orphans, that can be let for a rent equal to the interest calculated at 100 paras per purse on the estimated value of the Chiftlik, on the Timur Bash system, that is to say, on condition that the existing properties and animals that are destroyed are to be replaced, will continue as before to belong to the orphans until they reach their majority.

Manage-
ment of
orphans'
property.

32. If most of the property in the Chiftliks of this category is of a movable nature and the rest of the property consists of a few houses and straw barns, and the loss that will be caused by the destruction of these is very small in comparison with the size of the land, the movable property should at once be sold and the land which will be left as belonging to the orphans leased for whatever rent can be found.

33. If the immovable property of the Chiftliks is valuable, such as large buildings, mills, gardens, and vineyards, and it is proved according to the Sheri by the evidence of possessors of knowledge that by their destruction total loss will be caused to the orphans, then the whole lot can be sold by auction, and, in accordance with the Mazbata and Hujjet which will be sent to the Imperial Defter Khané, permission will also be given for the alienation of the land subject to the sold property. Land which is being used in connection with a house, and the value of which it is proved in accordance with the Sheri as above will be greatly diminished, in case of separation is also of this category, and, as aforesaid, the house and land can be sold together.

Manage-
ment of
orphans'
property.

8. Jemazi 'lakhir, 1275.

III. REGULATIONS REGARDING TAPU SENEDS.

PREFACE.

The legal requirements of Arazi Mirié are contained in the Imperial Land Law (1) printed and published in the year 1274, and in the Tapu Law printed and published in the year 1275 (2); but in place of the certificates stated in Art. 21 of the latter law, sealed with the seal of the Mejlis, which the law requires should be given to owners to be held as valid until the arrival of the Title-Deeds from the Imperial DeFTER Khané, in accordance with the concise system now established in order to simplify and secure matters, printed tabulated forms of certificate cut out of the printed Kochan Books, sent everywhere and filled up as shown in the Instructions (No. 4), should henceforth be given, and though a long law extending the articles of the said law will hereafter be published as it is necessary to alter and explain some of the provisions of the said law (3), for the present these instructions containing the necessary articles have been prepared.

1. Henceforth nobody shall be allowed under any circumstances to hold Arazi Mirié without title-deed. It shall be obligatory for persons having no title-deeds to take them out, and those having old titles other than the ones with the Tughra at top to change them. The Valis Mutessarifs, Kaimakams, Members of Mejlis, Mal Memours, Mudirs of Kazas, and Tapu Clerks having been appointed to carry out the necessary inquiries with regard to this, in case of negligence they will all be responsible. The person appointed to fill the post of Tapu Clerk shall be selected from among the Kaza, Mahkeme, and Nufus Clerks, who-ever must be most trustworthy and efficient.

All titles
to Arazi
Mirié to be
evidenced
by deed

NOTE.—*It has been notified by Vezirial letter, dated 26. Zilhijé, 1290, that the Defter Khané officials and Tapu clerks have subsequently been appointed everywhere. The Regulations regarding the issue of Title-Deeds for Arazi Mevkufé by the Defter Khané also are stated in No. 32.*

2. When a person is about to alienate his land to another, the formalities stated in Art. 3 of the Tapu Law shall be carried out, but as a separate Mazbata cannot be prepared for each case as required by the new system, at the time of alienation, and in the other ways stated in the printed instructions, printed Mazbatas shall be filled up monthly at the Head-Quarters of Kazas and Sanjaks, and sent, together with all the certificates that have been collected during the course of one month, from the Head-Quarters of the Sanjak to the Defter Khané. Though it is allowed

Provisions
as to Maz-
batas.

in case of necessity to send the certificates collected in less than a month, it is strictly forbidden to detain them for more than a month.

Writing
upon mar-
gins of
Tapu title-
deeds for-
bidden.

3. In accordance with the new system, the custom of writing in the margin of Tapu title-deeds shall be abandoned, and in every case a new title-deed will be issued for which three piastres' cost of paper and one piastre clerk's fee, to belong to the local clerk, shall be taken. Nothing else shall be taken.

Descent of
land upon
death of
tenant
without
heirs.

4. If it is proved that the land of a person who dies without heirs having the right of inheritance, which becomes the right of Tapu, has been taken and concealed, as stated in Art. 77 of the Land Law it shall be conferred on the person who has taken it if he is a possessor of the right to Tapu for its Tapu value at that time, that is to say, at the time when its concealment is proved. If he abstains from taking it for that price, or if he is not a possessor of the right to Tapu, it shall be conferred by auction on the candidate; but if the concealed land comes to light after the possessor of the right to Tapu has not without excuse: that is to say, one of the valid disabilities such as minority, insanity, imbecility, or absence from his country, come within six months of the date of the arrival of the Kochan Books required by this new system at their destination to the Mejlis of the Country, and asked for a certificate in order to get a Tapu

title-deed for it, the Tapu value shall not be sought for, but it shall be put up to auction and offered to him once for the price settled. If he accepts, it will be given to him, if not, as it will be given to any other candidate who appears, a certificate should be taken from him stating that he has withdrawn, and in order that everybody should know the circumstance from the beginning, it is the duty of the local officials to make it known to all in a befitting manner.

NOTE.—*The mode of auctioning the land in accordance with its size in the event of the owners of the right to Tapu withdrawing, is given in an amended Art. 18, of the Tapu Law.*

5. Lands Boz and Kiraj which are far away from habitations may be given gratis in order to be newly opened up into arable land on payment of only three piastres' cost of paper, as stated in Art. 12 of the Tapu Law, and one piastre clerk's fee in accordance with the new system, but cultivable land which has become waste (Khali) without owner is exempt from this rule and shall be given by auction to the candidate. As the opening-up of Boz and Kiraj lands and making them into arable lands is dependent on getting permission from the Government, as stated in Art. 103 of the Imperial Land Law, land which has been opened up and made into cultivated land without getting permission from Government after the publication of the said law shall be conferred

Disposal of outlying lands.

Permission of Government needful before occupation.

on the owner on payment of the Tapu value at the time of seizure and cultivation. But this decision also is the same as that stated in the last article if without excuse the owner does not come within six months and pay the Tapu value as stated above and ask for a title, in that case it shall be conferred on him on payment of the present Tapu value.

Definition
of Tapu
value.

6. The Tapu value which shall be taken for land that is going to be conferred on the possessor of the right to Tapu does not mean the amount fetched at auction or the amount stated by a person from outside, but its actual value in accordance with the information of disinterested possessors of knowledge, having regard to the likes of such land. It is contrary to law to put up to auction the Arazi Mahlul to which there is a right to Tapu. The Tapu value which shall be taken being the legal right of the Beit ul Mal, if the possessor of knowledge who gives information states more or less on account of having taken money or any other interested cause, he shall be punished in accordance with the Imperial Penal Code (4). The Civil and Financial Officials are also severally responsible in this matter. Exactly the same attention will also be given in matters of estimating the value of land for the customary fees to be taken.

Duty pay-
able upon
issue of
title-deed.

7. A fee of five piastres per hundred shall be taken on the value of lands when a title-deed is issued, in

accordance with the law for the sites of Chiftlik buildings, gardens, vineyards, &c. But the rule in estimating the value of these is this: that it will be supposed that there are no buildings, trees, or vines on the lands on which they are, and the fee of five piastres per hundred shall be taken on the price that they would be worth when raw land. No consideration will be paid to their value in their present state. But a fee of five piastres per hundred on the gross value of land and trees shall be taken on naturally grown woods.

Mode of
estimating
value.

8. A fee of five piastres per hundred shall be taken from persons who have no title-deed but who prove their prescriptive right (Hak Karar) in accordance with Art. 78 of the Land Law, that is to say, who have gained the right by undisturbed possession for ten years relying on one of the means of acquiring possession, such as inheritance, alienation, or transfer from a person who is authorised to confer land, and a new title-deed shall be issued to them, but this also is conditional on its being carried out within six months as stated above. If there is anyone who without excuse does not take out a title-deed within the said time, double fees shall afterwards be taken from them.

Duty upon
deed of title
got by
lapse of
time.

9. In accordance with Art. 11 of the Tapu Law, three piastres' cost of paper shall be taken from persons who have old title-deeds issued by Sipahis, Multezims, &c. (5), and fresh Tapu Title-Deeds will

Cost of
deed itself.

Old title-
deeds to be
given up.

be given, but it is necessary that the said old title-deeds should be reliable and valid, that is to say the seal of the title-deed should be known locally. As papers without seals or sealed with an unknown seal will not be looked upon as valid, persons holding them are equivalent to possessors of land without a title-deed, and they will be given a new title-deed on payment of a fee of five piastres per hundred, cost of paper, and clerk's fee, if the prescriptive right is proved. If the prescriptive right is not proved, then the procedure for concealed land stated in Art. 4 shall be carried out. Persons holding old title-deeds which are valid as above stated, should change them also as above stated within six months. The customary fee of five piastres per hundred shall be taken from those who do not change them within the said period.

NOTE.—*The examination of Title-Deeds held by persons claiming the possession of Woods, is given in the Regulations, Destur, Vol. III., p. 300.*

New title-
deeds on
loss of old.

10. As stated in Art. 11 of the Tapu Law, new title-deeds shall be issued to persons who prove from the registers that they have lost their title-deeds on payment of only three piastres' cost of paper, but this only applies to title-deeds with the Tughra at the top which have been issued by the Imperial Defter Khané. Persons claiming to have lost the title-deeds issued by Sipahis, Multezims, Muhassils, &c., before 1263 shall pay the customary

fee of five piastres per hundred. Persons who can prove from the registers that they have lost their Tughra title-deeds as stated, should also within six months take out new ones. Persons who without excuse have not taken out new titles within this period shall in every case pay the customary fee of five piastres per hundred. If there are any persons who wish to change their old Tughra title-deeds for the new title-deeds which are now being organised only three piastres' cost of paper and one piastre clerk's fee shall be taken and the tabulated forms will be sent to the Defer Khané in accordance with the new system. This course depends entirely on the desire being shown by the owners themselves.

11. When a person is going to alienate to another his share of the land held in partnership it shall be offered to his partner, and if he abstains from taking it a deed shall be taken from him and a note made of the circumstance in the alienation column (6) of the tabulated form of certificate. When land held in partnership is divided a note should also be made in the same place in the same form, stating that it has been divided in accordance with Art. 15 of the Land Law, which states that it should be divided in a just manner (7), and the title-deeds will be changed.

Sale by partner of his share in lands.

12. When one portion of the land held under one or more title-deeds is separated and alienated to another, a

Procedure upon severance. certificate shall be given to the purchaser in accordance with the rules that shall be carried out in other alienations, and the other formalities shall be carried out. If, on account of the separation of one portion, the boundaries and number of donums stated in the title-deeds possessed by the owner of the land are altered, the title-deeds shall be changed.

Duty upon succession and alienation. 13. When a person is going to alienate to another the land of which the inheritance (8) to him has not yet been legally carried out in accordance with Art. 10 of the Tapu Law, a fee of five piastres per hundred shall be taken from both, as fee of inheritance from the alienor and as fee of sale from the alienee, but supposing the said land has been inherited by the father of such person from his father, it is not allowed that two sets of inheritance fees shall be taken at once. When the land the inheritance of which has not been carried out as quoted above, is alienated to another gratis, both the fees of inheritance which shall be taken from the alienor and the fees of sale which shall be taken from the alienee shall be taken on the estimated value of that land.

Certificate to be given to alienee at time of sale. 14. When a person is about to alienate to another his land for which the title-deed has not yet arrived from the Defter Khané, but for which a certificate cut out of the counterfoil books in accordance with the system now adopted has been issued to him after the

customary fees of alienation have been taken, a separate certificate shall be given to the alienee, and the certificate in the possession of the alienor shall be attached to the duplicate of the new form of certificate issued to the alienee, and sent to the Defter Khané in accordance with the system. In the column "reason of issue of title-deed" in this new tabulated form of certificate, shall be written "as the title-deed has not yet come, the old certificate is sent herewith." In case the title-deed has been drawn up and sent to its destination in accordance with the old tabulated form of certificate before the arrival at the Defter Khané of this new tabulated form of certificate, it shall there be kept, and when the title-deed drawn in accordance with the new tabulated form of certificate arrives it shall be delivered to the alienee, and the Delivery of title-deed to purchaser. detained title-deed shall be attached to the certificate taken from him and returned to the Imperial Defter Khané. This procedure shall also be carried out exactly with regard to persons who have temporary certificates, and who die before the arrival of the title-deed.

15. The alienation, inheritance, and other affairs of Affairs relating to land: land contained in every village shall be carried out at the head-quarters of the Kaza to which it is subject, where to be carried out. and it shall not be carried out at the head-quarters of another Kaza or Sanjak (9). But, concerning land of which the inquiries or auction shall be carried

out at the head-quarters of the Sanjak, as stated in Arts. 16 and 18 of the Tapu Law, and likewise land of which the repeated auction should be carried out at Constantinople. After the procedure requisite in accordance with the law has been carried out, the certificate shall be drawn up locally as stated.

NOTE.—*An amended Art. 15, was published on the 7. Rebi ul akhir, 1304.*

Counter-
foils of
certificates:
where
to be kept.

16. As stated in the Instructions (10), the counter-foils of certificates shall remain as records at the head-quarters of each Kaza, and summary registers for each Kaza shall be kept at the head-quarters of Sanjaks. Both the counterfoils and the summary registers shall be kept in safe places in order to be referred to in case of necessity.

Explana-
tion of
difficulties.

CONCLUSION.—If any doubt arises in carrying out the new system, explanation should be asked from the Defter Khané Khakani.

7. Shaban, 1276.

IV. INSTRUCTIONS.

PREFACE.

The provisions of the law with regard to Arazi Mirié are stated in the Imperial Land Law (1), published at the beginning of Zilhijé, 1274 (2).

The duties of officials and the other procedure concerning this are also stated at length in the Tapu Law, of which copies have been printed and sent everywhere (3), in Jemazil akhir, 1275.

The provisions of these two laws shall henceforward also be in force.

In order to put the preparation and issue of Tapu title-deeds in good and regular order now by reason of the new system which has been adopted, it is necessary that the provisions of the said laws should be simplified and perfected, and printed tabulated forms of certificate have now been settled to take the place of the temporary certificates sealed with the seal of the Mejlis which are issued to landowners, to be valid until the arrival of the title-deeds from the Imperial Defter Khané, as stated in Art. 21.

The temporary certificates which have been issued until now and on which the duties and fees have been paid need not be changed for these printed tabulated forms of certificate; they shall be left in the hands of their owners until the arrival of the title-deeds from the Defter Khané and be valid as before. These Instructions have been drawn up to explain the procedure to be followed henceforth with regard to the said printed tabulated forms of certificate, which are to be sent to the Defter Khané on the arrival of the title-deeds.

Register
and certifi-
cates.

1. Different numbers for each Sanjak have been placed in the said registers. Each register contains two hundred forms of certificate, and each certificate is in triplicate. The certificates are bound in each register in consecutive numbers, beginning with one up to two hundred; when required, they will be used thus consecutively in the following manner. In order to show properly how they are to be used, printed forms of specimens have been filled up in different ways with the number of the specimen at the top, and six copies sent to each district. The Mazbatas to be sent from the Kazas to the headquarters of the Sanjak and from the head-quarters of the Sanjak to the Defter Khané having also been printed, copies have been filled up in order to serve as specimens, and likewise numbered, and one copy sent for each Kaza and head-quarters of Liva. As

separate summary registers for each Kaza will be kept at the head-quarters of the Sanjak, two specimen copies of these will also be sent to the head-quarters of each Sanjak.

2. Whenever an alienation (4), inheritance (5), transfer (6), issue of title-deed to a person without one (7), or exchange of old title-deed (8) takes place, in fine as shown in the specimens, the three forms of certificate will be filled up as follows: the name of the Sanjak opposite the word "Liva," the name of the Kaza in which the land lies opposite the word "Kaza," if it is land attached to a town the name of the place, saying "such a place outside the town" opposite the word "Kasaba," and if it is within the boundary of a village the name of the village opposite the word "Karié." And afterwards, opposite the words "side" in the columns for boundary, the present true boundaries of the land will be written; afterwards, in the column for donums the number of donums will also be inserted, as shown in the specimen forms; but in places where in matters of fixing the extent of land instead of donum, it is customary to say "it requires so much seed," instead of showing the number of donums the amount of seed which the land requires (9) will be inserted in the column for seed, afterwards the column for the kind of the land will be filled in as follows if the land is arable land: against the word "Ushrli" (titheable) arable land will be written, as shown in the specimen forms Nos.

Different
forms of
certificate:
when to be
used.

Certificate:
how to be
filled up.

1, 3, 6 ; if it is grass land, grass land will be written, as shown in specimen No. 5 ; if it is vineyard, garden, or orchard instead of arable or grass land, the word vineyard, garden, or orchard will be written ; if it is land paying a fixed equivalent of tithe, such as ground of a Chiftlik (10), wood (11), forest, site of a mill, ground of a threshing-floor (12), sheepfold (unroofed), straw-barn (13), sheepfold (roofed) as shown in specimen No. 2, the space opposite the words equivalent of tithes will be filled up with whichever of the said kinds it belongs to (14), and the amount of the equivalent of tithes will be fixed ; if it is summer or winter pasturage (15), or grass land (16), as shown in specimen No. 4, it will be written opposite the word taxable (Ressimli), and the amount of the tax will be expressed ; if it is one of the said kinds of lands attached to a Chiftlik (17), in order that its subjection to a Chiftlik should be known, in the certificate for each piece, as shown in specimen No. 3, in the small space opposite "subject to Chiftlik so and so" will be written. And in the certificate that will be given for the ground of the Chiftlik building itself, as shown in specimen No. 2, opposite the word "Titheable" will be written Chiftlik site, afterwards the name of the Chiftlik will be written in the said small space. Then the column for cause of issue of title-deed will be filled in as follows :—If there is an old title-deed, as shown in specimen 1, in the column for cause of issue of title-deed, the word "exchange" ; and if the title-

deed has been lost, as shown in the specimens 2 and 5 the word "lost" will be written, and if the number and date of the lost title-deed are known they will be noted opposite the word "Lost." If there is no title-deed (18), and it is really in the possession of a person who has proved his prescriptive right (Hak Karar) by being in undisturbed possession for more than ten years, as shown in specimen No. 6, the circumstance and the expression "new" will be written in the New title-deed. column for cause of issue of title-deed, and the estimated price of the land will be written in the column for estimated value, and the fees at five per cent. will be written in the column for customary fees. If it is dead land (Erazi Mevat) and the title-deed is to be issued gratis (19), the sentence will be written in the column for cause of issue of title-deed. In every kind of land the would-be possessor's name and that of his father will be written in the proper column.

3. When the alienation of a piece of land is going to be carried out, firstly, the columns stated in Art. 2 will be filled up as necessary; secondly, as shown in specimen 1, opposite the word "alienation," the name and address of the alienor and his father will be entered; thirdly, in the column for price of alienation, the amount at which the land has been sold will be written, and in the column for customary fees, the fees of alienation at five per cent. on the said price will be entered. If such land has been alienated Certificate: how to be filled up.

Certifi-
cate: how
to be filled
up.

gratis, the estimated price will be entered in the column for estimated price, and the fees of alienation at five per cent. on the estimated value will be entered in the column for customary fees (20). If it has been exchanged with other land (21) according to the explained method, the half of the total estimated values of both lands shall be entered in the column for estimated value, and the fee that shall be taken at five per cent. on that half value shall be entered in the column for customary fees.

Certifi-
cate: how
filled up
upon suc-
cession to
land.

4. When the inheritance of land (22) is going to be carried out after the procedure stated in Art. 2 has been carried out, firstly, if the land has been inherited from the father, as shown in specimen 2, "by the death of the father, so and so," will be written in the column for inheritance; and if it has been inherited from the mother, the name of the mother; and if from the children, the name of the son or the daughter should be written. In every case the date of the death of the deceased should be noted. Secondly, the estimated value of the land should be entered in the column for estimated value, and the fees at five per cent. in the column for customary fees.

Considera-
tion money
to be set
forth.

5. As stated in Art. 10 of the foregoing Tapu Law (23), when the alienation of land which has not yet been transferred takes place, the price of alienation will be entered in the columns for price of alienation and estimated value, and the total fees that

will be taken at five per cent. on each of these amounts will be entered in the column for customary fees. If land which has not yet been transferred has been alienated gratis, its estimated value will be entered in the column for estimated value, and the fees for alienation and transfer that will be taken according to its value will be entered in a lump sum in the column for customary fees.

Estimated value to be stated in case of conveyance without consideration.

6. After the procedure stated in Art. 2 has been carried out with regard to certificates that will be given to possessors of the right to Tapu, as shown in specimen 3, the name and date of death of the deceased and his relationship to the possessor of the right to Tapu are written at the head after the printed sentence "Right to Tapu (24);" afterwards, the value assessed by disinterested possessors of knowledge is written by the side of the printed sentence, "Equivalent Value."

Description of ancestor to be given

7. In certificates that will be given for pure Mahlul Land which has been conferred by auction (25), as shown in specimens 4 and 5, the way in which it has become Mahlul, that is to say, if there is no possessor of the right to Tapu, or there being one who abstains, the matter will be written by the side of the sentence, "Pure Mahlul," and the price fixed at auction will be written in the column for auction price, and if it is concealed (26) or disused land this procedure shall be carried out exactly.

Certificate as to pure Mahlul land: how to be filled up.

Foot of certificate:
how filled up.

8. After the procedure stated above has been completely carried out, and the three forms of the certificate have been filled in in the stated manner, as shown in the specimens: in the first empty space between the lines at the foot of the certificate the kind of the land, in the second the names of the owner and his father will be written, and the place for the date will be filled, and by the side of the printed word "Mudir" the word "Kaza" is written, if it is attached to the Kazas, and the word "Mal," if it is at the Head-Quarters of the Liva. And if the land is in partnership, the amount of the share is stated in the first empty space.

Duplicate:
how made.

9. After the clerical procedure stated above has been completely carried out, the right side of the certificate, that is to say, the paper with "Defter Khakani" written at the top, shall be cut off, and after having been sealed in the Kazas by the Hakim, Mudir, Treasurer, and Clerk, at the Head-Quarters of the Sanjak by the Hakim, Mal Memour, Treasurer, and Clerk, shall be given to the person who is going to be the owner of the land; afterwards, the duplicate of the certificate shall likewise be sealed and dated, cut off at the place shown in the specimen, sewn on to the old title-deed, if there is one for that land, and, if not, kept by itself.

NOTE.—*It has been notified by Vezirial letter, dated 26. Zilhijé, 1290, that separate Defter Khané and Tapu Memours having been*

appointed in the necessary parts of the Ottoman Dominions when questions and cases concerning Arazi Mirié are being heard the Defter Khané or Tapu Clerk, and in places where the Tapu system is not yet established, the Mutessarifs, Kaimakams, and Mal Memours, should temporarily, until it is put into execution, be considered as owners of the soil.

10. The certificates collected in each Kaza during the course of one month, together with the old title-deeds attached to them, will be sent to the Head-Quarters of the Sanjak to which they are subject, enclosed in a Kaza Mazbata, filled up as shown in the Specimen No. 7, Kaza Mazbata, which will be sealed by the Mejlis.

Transmission of certificates.

11. In the manner stated two forms of each certificate will be cut off, the third form will remain as a counterfoil and will be kept on the spot in order to be referred to in case of necessity, and the appendix of this counterfoil will also be likewise sealed at the same time as every sheet is filled. The Mudir of the Kaza and the Clerk are responsible for the keeping of these counterfoils. Exactly the same procedure will also be carried out in the Kaza which is esteemed the Head-Quarters of the Liva.

Certificate to be in three parts.

Counterfoils.

12. Separate summary registers for each Kaza will be kept at the Head-Quarters of the Sanjak. These registers are also printed, and the summary of the certificates will be entered, as shown in specimens

Summary registers : how kept.

Summary
registers:
how kept.

Nos. 8 and 9 of the summary register, thus:—Firstly, after the name of the Kaza has been filled in at the top, the name of the village will be written under it, and if the land is not in a village, but attached to a town, then the name of the town will be written in the column under the word “town.” When the name of a village has been entered in a column and it is necessary that the name of that village should again be written in the column next under also, no need remains to write the name of that village again, and the sign “m” will be put. Secondly, the kind of the land will be entered. Thirdly, if the extent of the land has been fixed in donums in the certificate it will be written in the empty column under the column for donums, and if it has been fixed by seed it will be written in the empty column under the column for seed. Fourthly, the name of the person who will be possessor of the land will be filled in in the proper column with the number of the certificate under it, and the number of the book from which it has been extracted will be noted under the column for number of register. Fifthly, the total of the fees for title-deed or Muajele and cost of paper in the certificate will be entered in the column under the receipts column, and the total once in five of the figures in the receipts column will be put in the column for total by the side of it. In whatever column the first of the month occurs, the whole of the totals will be there collected, and the name of the

month in which they will be entered in the Treasury Book will be entered in Greek style, in the column for cash-book, by the side of the column for summary of totals. Sixthly, the date on which the certificates are sent to the Imperial Defter Khané will be entered in the column for it; under it, in the column for "events" in the Summary Register, such events as inheritance, alienation, &c., and such matters as land being attached to a Chiftlik should be entered.

13. After the tabulated forms of certificate coming from the attached Kazas and those used at the Kaza considered the Head-Quarters of the Liva have been entered in the Summary Register in the manner stated, as shown in Specimen No. 10, "Liva Mazbata," a Liva Mazbata will be prepared, the Mazbatas coming from the attached Kazas, together with the tabulated forms of certificate collected at the Head-Quarters of the Liva will be put in an envelope enclosed in the said Mazbata, the whole will be put in an envelope addressed as follows :—

On the top—Land Mazbata.

In the middle—To the Defter Emanet.

At the bottom—From—Kaza—Sanjak.

which will be put in the post and sent direct to the Defter Khané.

14. The date of the arrival of the Tapu title-deeds prepared and sent from the Imperial Defter Khané

Issue of
Tapu title-
deeds.

will be entered in the column for the date of arrival of the title-deeds in the Summary Register immediately on receipt at the Head-Quarters of the Sanjak : those for the Kaza administered at the head-quarters will be delivered to their owners against the certificates which they hold : those for the attached Kazas will be sent at once to their destination and likewise delivered to their owners against the certificates which they hold : the certificates thus collected will be sent to the Head-Quarters of the Sanjak, and, together with those collected there, will be sent in sets to the Imperial Defter Khané.

15. Shaban, 1276.

V. A LAW ON THE REGISTRATION OF CENSUS AND OF PROPERTIES.

This law consists of one part subdivided into seven chapters and a conclusion.

The first chapter relates to the number and the mode of appointment of the officials to be appointed; the second to the duties of the officials and to the measures to be adopted for the registration of census and of properties; the third to the duties of the managing commissions, to the management and apportioning of the verghi and temetu taxes, and to other particulars; the fourth to the village divisions of six villages each, and of their duties; the fifth to the dealing with the occurrences (vukuat); the sixth to the management of "seneds," papers, record-books and kochans; the seventh to the fixing and preservation of the plates bearing the numbers with which the properties are to be marked; and the conclusion to matters of general bearing.

CHAPTER I.

Registration of census and of properties. The two classes of officials to be appointed for the registration of census and of properties are the registrars and the assessors. The registrars will be twenty-two in number under a chief, and at the beginning of the registration there will be four assessors, twenty-seven officials in all.

CHAPTER II.

1. This staff will begin the registration in the head-quarters of the province by dividing itself into two divisions; each division taking up the work in one of the equal halves east and west, into which the head-quarter city or town is to be divided. As the officials will in the beginning be in the same place with their chief, most of them will have learned the work when the registration of the head-quarter is completed. They will then proceed by degrees into the districts and Nahiés, where they will part into four divisions. Each division will, at the place where it begins the work, elect, through the notables of the place, two salaried, able, and trustworthy assessors, and will then proceed with the registration.

Duties of
registra-
tion
officers.

2. When, after the completion of the registration of the head-quarter and of the book thereof, the registration begins in the surrounding country, district by district, at four places as stated above. The first and superior registrar in each division will be the officer of registration, and the others will be rough-copy clerks, copyists, and recorders. As the assessors value, the assessments must be recorded in the books. It is

Registra-
tion in
districts.

Assessment.

essential that the assessments be made correctly, and the registration be proceeded with easily and quickly. In the registrations of the head-quarters, assessment by the (paid) assessors will be sufficient, because all the officials and assessors being together, and the commission of registration being on the spot, errors in the assessments will be scarce, and, should any occur, it is the duty of the commission to correct them at once. In the country, however, where each division of officials will have only two assessors, with a view to secure correctness of assessment and despatch of registration, an assessing committee of not more than six persons will be formed at the villages where the officials arrive, from among the notables and trustworthy inhabitants of those and the neighbouring villages. The paid assessors will be together with the assessing committee, who will assess the properties first, and if their assessment satisfies the officials and the assessors that it represents the correct value of the property concerned, it will at once be entered in the rough list. Should there be any mistake it will be amended as the locality and condition of such property and its comparison with similar properties may direct. Then the officials will proceed to another village to register in the manner stated.

Assessing committee.

Assessing committee

3. Of the six persons appointed as stated above from among the notables and trustworthy inhabitants of the villages to form the assessing committee, one

will be the president, and the other five the members of the commission. They will duly perform, in the manner above described, the work of assessment, which is their special duty at the time of registration, and will always make inquiries with reference to the applications which the people make as regards the question of assessment, and will also consider any dispute, which may be settled by arbitration. The mode of election of the members of this commission and their duties in these matters are laid down in the special law.

4. Everybody knows that in the towns and villages the Mukhtars are of the lowest-class people, and that Choice of proper Mukhtars. notables and honest people decline this office ; while, in order that reforms be carried out properly, it is most essential that the conditions of the officials who are in these matters be such as to inspire confidence to the Government and the people. The first duty of the registration officials when arriving at a place will be to dismiss the Mukhtars at once, and to elect new Mukhtars, honest and trustworthy people, from the notables of the place.

5. The election of the Mukhtars will be performed in the head-quarters of the province, through the Vali, the Financial Officer, the Mufti, the Cadi, and one or two Mukhtars : how elected. (Moslem) ecclesiastics enjoying general confidence ; in the head-quarter of the sub-province, through the

Mukhtars : Mutessarif or Kaimakam, the Financial Officer, and
how one or two persons from the ecclesiastics or notables of
elected. the people, or of the merchant class, possessing certain grades; and in the district through the Mudir, the Mufti, and one or two notables.

Enumera- 6. The second step of the officials after the election
tion of of the Mukhtars is to count all houses and dwelling-
dwelling. places, and make a list of them; then to prepare the number-book of the city, town, or village, of which the registration is to commence, and to write on the walls the old names of the quarter and street without alteration, and the numbers of the houses. When the correctness of these numbers and names is ascertained plates will be prepared accordingly and fixed.

Registra- 7. After the numbers are marked correctly it is
tion of time to begin the registration of census and properties.
census and It is known that hitherto, owing to the insufficiency of
properties. the measures adopted for registration, the notables and nobility of the population have been daring to conceal persons and their wealth with a view to save their children from military service, and to pay less taxes than other people, and that they have been neglecting to show the wealth and persons of other people so as to buy their silence. To prevent the recurrence of this, four measures will be taken:—

i. Whosoever conceals person or wealth will be imprisoned with hard labour for three years.

ii. At the time of the registration all male ^{Census of} persons, grown or young, will go to the registrars ^{males.} and report themselves to them. Women will be registered on the report of their protectors or ^{Of females.} representatives. After the registration a census permit will be given to each individual. Unless this permit is produced no law suit, whether relating ^{Census} to the Sheri or the Nizam, will be heard before any ^{permit.} Sheri or Nizam Court, nor shall any passport be issued.

iii. All births and deaths will be reported in time and registered in a special book.

iv. Several days before the registration begins notice in print will be given to all the people of the punishment to which concealers of person will be subjected of the above second and third measures.

8. At the time of the census registration the wealth ^{Inquiries} and income of each person is at first to be inquired ^{as to per-} after from the person himself, and if this information ^{son's pro-} seems unsatisfactory, considering the trade and the ^{perty.} name of the man, inquiries will be made from notables believed to be reliable, and the satisfactory information as to the man's standing thus obtained will be registered in the book. His old tax will also be marked against his name in the special column in the book.

9. When registering properties the true value of

True value
of property
to be
stated.

houses, khans, shops, and similar properties, of farms, mills, factories, and other income-bearing properties, of unbuilt plots of land, vineyards, gardens, and of all lands in general, is to be brought to light in the manner laid down in Art. 2, according to their situation and their true value. The annual income of each kind of property and land is to be ascertained, and searches and inquiries and inspections of title-deeds are to be made to find which of the properties bear income and which do not; which of the houses are occupied by the

Particulars
of property.

owners and which are let; by what title the owners possess the properties, whether as mulk by ijaretein or by tapu. All these particulars will be registered in the proper place in the special book under general and special numbers. Any sales and transfers which take place at the time of the registration will be recorded in the column of remarks, and in the book of occurrences.

Registra-
tion of cer-
tain sales.

Registra-
tion of
public
buildings.

10. The number and particulars of mosques, mesjids, Government buildings, schools, places of worship belonging to all communities and similar public buildings should, at the time of registration, be recorded for information in the proper order.

Property
of aliens.

11. Properties of any foreign subjects assigned to their wife or relatives of Ottoman nationality should be registered in the ordinary manner. As to foreign subjects who do not possess property or house, but live

in hired shops and stores, the conditions, circumstances, Census of
income and trade of such will be separately recorded. aliens.

12. The registration officials will examine the title- Examina-
deeds of all kinds of properties and lands. They will tion of
inform the officers of verification of lands, of any title-deeds
transfers which may not have been formally carried
out, and will refer the matter to these officers in order
that the title-deeds be renewed by the Mehkeme or the
Evkaf. The new title-deeds of the proprietors who
are really unable to pay the transfer fees will be made
out gratis by the Cadis and the directors of Muajele
properties on stamp duty being paid in such cases.
The new title-deeds should bear a record of the name Contents of
of the quarter and street, and of the form, measurement, title-deed.
and the number of the house. In title-deeds of lands,
the general numbers, the limits and the form and
measure given in the emlak book, should be recorded.

CHAPTER III.

Taxes: how
to be man-
aged and
appor-
tioned.

It being important that in all the provinces the apportioning, collection, and management of the taxes to be imposed after the registration of census, properties and income, be put under such a system as to win the confidence of the people and prove advantageous and easy to the Imperial Treasury, the operations are hereunder described.

Managing
commis-
sion.

1. For the apportioning, collection, and management of the taxes, a Commission will be formed of the director of Census, the director of Muajele properties, and three Moslem and three non-Moslem notable (Ottoman) subjects of unspotted reputation, under the presidency of the financial officer and the supervision of the Vali of the province. Other persons may, if needed, be invited to participate in the deliberations. The above-mentioned six Moslem and non-Moslem members will be elected by the Vali, the Muhasebiji, the Cadi, and the Mufti, who will submit the result of the election to the Sublime Porte by a Mazbata under their seals reporting the qualifications of the elected, whereupon an Imperial Order will be issued and carried out. One third of these elected members will leave

Rotation of
members.

office every year, and others will be elected and appointed in their place in the manner described.

2. This Commission will detach receipt forms from the printed special counterfoils to be prepared every three years according to the accounts extracted from the Emlak and trade permit books. They will fill the amounts in the receipt forms of verghies and will give these to the Mukhtars, and will hand the trade-permit forms to the heads of tradesmen. The latter will fill in the trade-permit forms, the names and amounts, in the presence of the elders and notables of the quarter according to the account given them. As they (the Mukhtars and heads of tradesmen) collect the taxes by fixed instalments, they will note the receipts in the receipt column of the Verghi forms, and on the back of the trade permit forms. When the collections are completed they will hand these forms to the Treasury, together with the last instalment. The revenue officials will, after comparing them with the counterfoils and with the book, stamp them on the special place with the seal marking "Received." These receipts will then be returned to the Mukhtars and heads of tradesmen to be distributed one by one to the respective people to whom they belong.

Duties of
commis-
sion.

Duty of
revenue
officers.

3. The receipt forms of the military contribution tax will be written up from the counterfoils according to the accounts extracted every year from the census book,

Receipts for military contribution tax. and will be handed to the heads of the communities for collection of the tax, and the transactions will be conducted in the manner explained in Art. 2.

Issue of new forms. 4. At the expiration of the period for which the receipt forms of the taxes mentioned are prepared, new forms will be distributed at the beginning of March. The formalities of these should be completed by the end of that month at the latest, and the collection should commence. After the collection is completed the transaction will be carried out in the manner described in Art. 3 (probably 2 is meant).

Scale of rating. 5. The Commission will inspect the repairs and the new buildings in the city and its neighbourhood, will assess and register the value thereof and assess taxes on them at four per thousand on the total value, four per cent. on rent, and three per cent. on trade profits. Besides, a registration fee for one year only will be taken at the rate of one per thousand from the total of the value and rent, and half per cent. on trade profits. The excess of tax (on the old assessment) thus occurring will be paid to the Treasury towards the decrease caused by the burning or demolition of the properties originally registered. When a great fire or earthquake or calamity happens, and the tax on the properties registered is decreased to such an extent as not to be covered by the increase from new buildings, the decrease cannot be made up by increased taxation on

Applica-
tion of
excess.

the remaining properties, nor should the owners of the burned or demolished properties pay taxes on the old registered value of their properties. The values of the sites of such properties will be rightly assessed by the Commission at the head-quarter of the province, and the tax on such value only will be collected. It will then be submitted to His Imperial Majesty to remit the decreased tax pending its being covered by the erection of new buildings.

Decrease of
tax upon
destruction
of pro-
perty.

6. The building tax shall be managed by this Commission. When a new building is to be erected in the head-quarter city of the province, information should be given at first to this Commission, who will register it in the building book, receive the tax, and give the permit. The completion of the building should be reported to the Commission, who will assess its value and impose the Verghi accordingly. Should any building be erected without the information of the Commission, even though it be built legally, the carpenter or architect who built it will be imprisoned for three months, and the proprietor will be fined a sum equal to two years Verghi of the building for disobedience to the new rules. If the building is built in contravention of the building law it will be demolished by the Government, and the architect will be imprisoned six months. This rule will be carried out exactly in the headquarters of sub-provinces and districts. The Kaimakams, Mudirs and Councils will see that the law is

Building
tax.

Regulation
of build-
ings.

Buildings. respected, and will report the occurrences to the Central Commission without loss of time, as prescribed in Art. 2, Chap. 5.

Applica-
tion of
taxes.

7. After the registration, sums will be appropriated for municipal works and for the taxes of widows, orphans, and poor people unable to pay taxes. When any work of public utility is required the Commission will submit the matter in writing to the Council of the province, whereupon the Grand Vizier's authority shall be asked, and if obtained the work will accordingly be executed and paid for out of the appropriation. The Treasury will pay from the appropriation the taxes of such poor people for whose inability to pay a certificate shall have been given by the elders, notables, and Mukhtars of their quarter, and whose poverty has been certified by the officials on reference to the census register.

Clerk and
copyist.

8. As under the system of collection of Verghi described the work of the Revenue Department will naturally decrease, a competent clerk and a copyist (from that department) will be given to the Tax Commission.

Transmis-
sion of cen-
sus books.

9. The census books once written up by the registration officials will be delivered to the Inspector of Census of the province. After this, all occurrences will be recorded at the Commission by the registrar of occurrences, according to the established rule.

10. No addition under the name of expenses or under any other name will be made on the tax allotted to the people.

Tax not to be unlawfully increased.

11. The registration officials will supervise the execution of this till the end of the work.

Duty of officers.

CHAPTER IV.

Village
divisions.

1. Each six villages will form a division, and each village will elect a member in the manner to be stated in the election law, of whom one will be the president and five will be members.

Duties of
village
divisional
officers.

2. They will meet in summer once a week, and in cold countries once in two weeks, on a fixed day at one of the six villages in turn: will apportion the trade tax, if there are any tradesmen in their villages, according to the condition of each tradesman every year. It is obvious that information will be received (at the head-quarter of the district) of any transfers and sales of properties and new buildings, which will not be erected unless permission is given by the District Council, but should any buildings be built without permission they will inform the Council of the district of such buildings, and of those which have been ruined or burned, and will report all births and deaths, and all changes of residence.

CHAPTER V.

DEALING WITH OCCURRENCES AT THE HEAD-QUARTER
OF THE DISTRICT.

1. The census registrar will record in the new form handbook in his hands any matters concerning the census which are found in the handbook of occurrences received from the village divisions. Once in three months he will prepare a schedule of the census occurrences on the printed form, showing the general numbers of each name in a particular column. This schedule will be certified by the Council of the district and forwarded to the Council of the sub-province to be handed to the census clerk. The occurrences referring to properties will be caused to be recorded in the book kept by the clerk of the Council: then the changes in the condition of the properties and their sale and transfer will be entered with the general number on a special schedule, which will be sent once a year to the Council of the sub-province to be given to the Emlak clerk there. The occurrences of the trade tax will also be recorded by the district clerk in the handbook, and a summary list without names showing the increase or decrease of the trade tax will be sent once a year to the revenue officer of the sub-province.

Occur-
rences :
how dealt
with.

Change in
condition
of pro-
perty.

DEALING WITH OCCURRENCES AT THE HEAD-QUARTER
OF THE SUB-PROVINCE.

Record of
occur-
rences.

2. From the three kinds of statements of occurrences to be reported to the sub-province at fixed times by the districts, the census clerk will record in his handbook the occurrences of the census, and the revenue officer will register the occurrences relating to the property and income taxes in the respective handbooks. They will then forward the statements to the Commission at the head-quarter of the province.

MANAGEMENT OF THE OCCURRENCES AT THE HEAD
QUARTER OF THE PROVINCE.

Record of
occur-
rences.

3. The three kinds of statements received from the sub-provinces will be registered on the day of their receipt in the special handbooks and entered in the book of occurrences. The occurrences of the property tax and of census will be entered name by name in their columns, but the occurrences of the income tax will not be entered name by name, but in one sum for each village. If on comparison with the register the increase or decrease shown by these three reports of occurrences are found very great, every search and inquiry should be made to find out if loss has been caused to the Treasury by recklessness, or if the people have been damaged in order to increase the Government revenue and to make the amendments. The persons who have

been the cause of these faults will be tried and reported to the Porte.

4. As the occurrences will increase or decrease the taxes, the amendments of taxes mentioned in the instructions to the managing committee will be recorded on the Kochans and carried out accordingly the next year.

Record of amendment of taxes.

5. A clerk, named the diary keeper of the Commission, will be appointed for the present to the Central Commission, to keep the accounts of the Kochans and forms to be distributed to the provinces, and to see that these are not printed more than necessary and wasted. Another clerk, called the comparing clerk, will be appointed, whose duty it will be to compare the occurrences with the register and to note the correctness of the births and deaths, constructions and transfers, and of the new permits, by reference to the surnames and to the names of proprietors recorded in the register.

Diary keeper.

Comparing clerk.

CHAPTER VI.

MANAGEMENT OF KOCHANS.

Manage-
ment of
Kochans

1. The Central Commission will cause to be distributed, village by village, through the first-class registration officials, the lithographed Kochans of Verghis and income taxes, and of census prepared according to the statement furnished by the diary-keeping clerk from the register. The census permits will be given only once, but for those who are born or have transferred their residence since the registration, the Commission will in time cause to be prepared from the occurrence-reports census-permits on the printed forms, showing the special and general number of their names and other particular marks, and will send them to the districts. The Mudirs of the districts will hand these to the Mukhtars to be given to the people to whom they belong. In the district of the head-quarter these will be distributed through the Mukhtars.

Supply of
Kochans.

2. Once every three years in the month of January the Commission will send to the sub-provinces separate bags for each district containing the Verghi and income tax Kochans prepared from the register. When these

reach the sub-province they will be sent without delay to the districts. The districts will hand these papers to the Mukhtars of the villages and quarters, who will hand them to the people one by one. As stated in the instruction to the Central Commission, each payment by the people will be noted on the special place of the Kochan, and sealed with the receipt seal of the treasury of the district on the special place or on the back of the Kochans, the Kochans being (each time) returned to the Mukhtars to be distributed to the people. After these Kochans are sent backward and forward between the head quarters of the district and the villages for three years at fixed times, the fourth year they will be sent from the head quarter of the district to the head-quarter of the sub-province to be checked with the counterfoils kept at the Revenue Office and with the accounts received from the district, and returned at once to remain as receipts in the hands of the people. New Kochans will then be detached from the counterfoils and forwarded to be managed for three years at the districts, and returned the fourth year to the sub-province to be dealt with in the manner described, and so on continuously.

Distribu-
tion of
Kochans.

Checking of
Kochans.

3. The carrying out of the sale or transfer of any kind of property and land by the Courts and Evkaf officers will absolutely depend on whether the taxes thereof have been paid. The Cadis and officials will not be able to effect any sale or transfer unless they

Taxes must
be paid
before
transfer.

Taxes to be
paid before
convey-
ance. see on the Kochan that the taxes have been paid, and they will note on the title-deeds which they write the general numbers marked on the Verghi Kochans and the numbers and folios of the books in which the properties are registered.

PREPARATION AND MANAGEMENT OF THE RECORD BOOKS.

Record
books:
where
made. 1. As the registers will be large and made only once, they will be prepared and bound at the Imperial Printing Department. All kinds of Kochans and occurrence handbooks and all forms relating to the registration will be printed at the lithographic press of the Commission.

Books to be
well kept. 2. The clerks having the best hand will write up the registers at the Commission. Care should be taken that they be perfectly correct. No erasure should be made, but any mistakes should be crossed by a thin line so as to allow the original writing to be read. Great care should also be taken of the correctness and cleanness of the handbooks to be kept at the sub-provinces and districts. A correct and clean copy of the register in good writing should be made and sent to the Chief Defteri Khakani office (at Constantinople).

CHAPTER VII.

MANAGEMENT AND PRESERVATION OF THE NUMBER PLATES TO BE FIXED TO BUILDINGS.

1. The numbers of the buildings will be fixed according to the maps which will be given to the officials, and care will be taken always for their preservation. If the number plate of a building is lost or broken at the villages, the village division commission; at the head-quarter village of the district, the Mudir; at the head-quarter town of the sub-province, the Kaimakam; and at the head-quarter city of the province, the Mudir of the city employed by the Commission, shall ask the proprietor to fix a new one, and if he does not do it they shall report him to the Government and have him compelled to do so.

CONCLUSION.

1. The occurrences of properties and lands and of census are always recorded in the Chief Defteri Khakani office and the Jeridé Muhasébé office. The latter being transferred to the Chief Defteri Khakani office, the reports of these two kinds of occurrences

Transmis-
sion of
records.

should at fixed times be sent to the Chief Defteri Khakani office by all the managing commissions in the Empire.

Inspectors
of records.

2. It being most essential that this registration be carried out strictly in accordance with the rules and regulations, two inspectors will be appointed from the officials who have been in the work from the commencement: one for Turkey in Europe, and one, for the present, for Turkey in Asia, to make inspections till the completion of the registration.

Punish-
ment of
officials.

3. Should any official act contrary to the rules laid down in this and the previous drafts, or be lax in performing his duties in due time, he shall be tried and reported here by a Mazbata by the Council of the province.

14. Jemazi ul evel, 1277.

VI. SUPPLEMENT TO TAPU LAW,
1275.

Actions about mortgage (Féragh bil vefa) of Arazi ^{Mortgage}
Mirié and Arazi Vakfié of the Takhsisat category, in ^{to be by} deed.
which the mortgage is not bound by deed, will not be
heard. (See Note 35 of Notes to 2.)

26. Safer, 1278.

VII. LAW DECIDED ON BY IMPERIAL IRADÉ CONCERNING THE SALE OF LAND OF CERTAIN DEBTORS FOR THE PAYMENT OF DEBT.

Certain
property of
debtor not
to be sold.

In accordance with the old law only the house which is lowest in value of a debtor shall be left, the sale of his other property having been decided on. A quantity sufficient to manage that house of his Arazi Mirié will be left, the remainder shall be sold by auction. If, after these have been separated, the value of the things sold is not sufficient to pay the debt, the remaining sum shall be collected from his sureties.

Sale of
debtor's
property.

Debts on account of farmed revenues which the farmers have transferred to others will be treated in exactly the same way as debts to Government; in accordance with the law it is necessary that the payment of the debt should be made by the sale of all the debtor's property and effects, with the exception of one house. But, in accordance with the Imperial Land Law, Arazi Mirié cannot be sold for debt. In the event of its being decided that the debtor's land can-

not be sold, Government claims are exempt from this decision. This exemption is applicable to sums due direct to the Government Treasury ; it is not applicable to sums due to persons or to farmers of revenue.

Exemption
of Govern-
ment
claims.

Rebi ul evel, 1279.

The provisions of this law contrary to the laws for the sale of immovable property for debt, and Arazi Mirié and Mevkufé, and Musakafat and Musteghillat Vakfié, satisfying debt after the death of the debtor are abrogated.

VIII. REGULATIONS CONCERNING TABULATED CERTIFICATES.

Preliminary.

In order to facilitate the procedure of alienation, inheritance, and other matters of all Musakafat and Musteghillat Mevkufé in the provinces in accordance with the compact system now adopted, as it is necessary that henceforth printed tabulated certificates should be cut out of the printed counterfoil registers, sent everywhere and issued as shown in the Instructions, these Regulations contain certain matters derivative from this.

Tenure of certain lands.

1. Henceforth Musakafat and Musteghillat Mevkufé shall not be possessed by any person in any way without a title-deed from the Vakf. By this means persons who have no title-deeds, and those who have title-deeds from places other than the Vakf, will be obliged to get new title-deeds. The necessary precautions in this respect will be carried out by all the officials.

Necessity of title-deeds

2. The columns of the tabulated forms of certificate will be filled up in the manner shown in the printed

instructions when a person takes a title-deed in any way for Musakafat and Musteghillat, with the exception of those leased by Muajele, a register will be prepared in accordance with the register of which a specimen has been sent of the number collected during one month, and together with the necessary fees, &c., will be sent to the Imperial Evkaf Treasury. If they are detained more than one month in their locality the Evkaf Mudir will be responsible.

Certificate
how to be
filled up.

3. Though the auction price or equivalent value of Musakafat and land leased by Muajele will be delivered to the Treasury in accordance with the system, and the totals will be included in the register sent to the Treasury once every three months as stated in Art. 45 of the new law, in order to guard against causing interruption to the Treasury, besides the said register, an individual register (Mufredat Defter) will be prepared and filled in in the method of the tabulated forms of certificate stated in the foregoing articles, and sent together to the Imperial Evkaf Treasury.

Separate
register.

4. The following fees will be taken :—

Duties.

5% on the gross value of titheable places, and on the value of the land only of places paying fixed rent (Mukata) when alienated and inherited.

2½% on the mortgage (Istiglal) and cancellation of the mortgage (Istiglal) of the said places.

Duties.

3% on the alienation of places held in ijaretein.

1½% on the inheritance, mortgage (Istiglal), and cancellation of the mortgage (Istiglal) of the said places.

Double duty in certain cases.

5. As a restrictive measure, double the fees will be taken if a possessor of Musakafat and Musteghillat by inheritance does not have the inheritance procedure carried out at the time of settlement, and subsequently or at the time of sale has it carried out.

New title-deeds.

6. According to the new system, the writing of marginal notes on title-deeds having henceforth been abandoned, new title-deeds will be issued in every case. Three piastres' cost of paper and one piastre clerk's fee will be taken for every title-deed. Nothing else will be levied.

Disposal of land when no heirs.

7. If it is ascertained that the land of a person who dies without heirs and which has become the right of Tapu has been taken and concealed, as stated in Art. 71 of the Imperial Land Law, if the person who has taken it is an owner of the right to Tapu it will be conferred on him for the Tapu value at the time when its concealment is ascertained ; if he abstains, or if the person who has taken it is not an owner of the right to Tapu, the said land will be conferred on the candidate at auction. If within one year from the date of the arrival at their destination of the counter-

foil registers in accordance with this new system, ^{Grant of} without having a valid disability, such as minority, ^{vacant} insanity, imbecility, or absence from the country, the ^{lands.} owner of the right to Tapu does not apply to the Evkaf Mudir for a certificate in order to obtain a new title-deed for this kind of concealed land, and subsequently appears, the Tapu value will not be sought; the land will be offered to him once for the price fixed at auction, if he is a candidate it will be given to him, if not, a deed showing that he withdraws will be taken from him, and the land will be given to another candidate. It will be the duty of Evkaf Mudirs to make the matter known in a proper manner beforehand for the information of everybody.

8. On payment of only three piastres' cost of paper ^{Grant of} and one piastre clerk's fee, Boz and Kiraj places ^{waste} which are far from the most distant habitation may be ^{lands.} granted gratis, in order that they may be newly opened up into arable land, but arable land which has become vacant (Khali) without owner is exempt from this rule, it will be granted to the candidate at auction. The newly opening-up and making into arable land of the said Boz and Kiraj places depends on permission ^{Leave to} being obtained from the official; as stated in Art. 103 of ^{occupy} the Imperial Land Law, the Tapu value at the time of ^{essential.} seizure and cultivation will be taken from the owners of places which have been opened up and made into arable land without the permission of the official after

Occupation of waste lands. the date of publication of the said law, and the land will be granted to them. This decision is also as stated in the preceding article. If without excuse the owner does not come within one year and ask for a title-deed on paying the Tapu value, as stated, it will be conferred on him for the present Tapu value.

Definition of Tapu-value. 9. The Tapu value taken for land conferred on an owner of the right to Tapu does not mean the amount ascertained at auction or as stated by a person from outside, but the real value of the land according to equals on the information of unbiassed possessors of knowledge. It being contrary to law to put up to auction Arazi Mahlul to which there is a right to Tapu, and the Tapu value that will be taken being the lawful right of the Vakf, if the possessor of knowledge has received money, or in any other way founded on bias states more or less than the real value, he will be punished in accordance with the Imperial Penal Code (1). The Evkaf Mudir and Civil officials will be held severally responsible in this respect also. Exactly the same care will also be bestowed on matters of estimating the value, in order to take fees of alienation and inheritance.

Grant of Mahlul property. 10. As there will be no right to Tapu in Musakafat and landed property held in Ijaretein, those of these which become entirely Mahlul will be leased to the candidate at auction according to the former system.

When a small or large share of a not entirely Mahlul Auction of Mahlul property. khan, bath, shop, garden and such like thing of the landed property category becomes Mahlul it will be sold to the candidate at auction. But houses are exempt from this law ; if a share becomes vacant it will not be sold by auction, but leased to a shareholder on the valuation of a competent person (2).

11. On payment of alienation fees new title-deeds Issue of new title-deeds. will be issued to persons who, in accordance with Art. 78 of the Land Law, prove their prescriptive right (Hak Karar), that is to say, to persons who by inheritance, alienation from another, or relying on one of the means of acquiring possession from those who are authorised to grant land, have gained the right by undisturbed possession for ten years and have no title-deed, and also to persons who have no title-deed for Vakf land on taking a Mulk Hujet for the vines, buildings and trees of places of which the land is Vakf, and the vines, trees and buildings Mulk. But this also is on condition that it shall be carried out within one year, as stated above. If there are any Penalty on neglect to get new title-deeds. persons who without excuse do not take out title-deeds within that time, double the fees will be subsequently taken from them.

12. New title-deeds will be issued for the Musakafat and Musteghillat of persons who have valid old title-deeds sealed with the seal of the Muteveli of the

Issue of
new title-
deeds of
Musakafat
and Muste-
ghillat.

Vakf, and who wish to exchange them, on payment of only three piastres' cost of paper and one piastre clerk's fee. But papers without seal or sealed with an unknown seal will not be looked upon as authentic; this kind of land will be treated as held without title-deed. New title-deeds will be issued on payment of the customary fees, cost of paper, and clerk's fee, if the prescriptive right (Hak Karar) is established; if not, the concealed land procedure will be carried out.

New title-
deeds upon
loss of old.

13. Persons who prove by the registers that they have lost their title-deeds must take out title-deeds within one year. Title-deeds will be issued to persons who do not take out title-deeds during this period on payment of the customary fees. Only three piastres' cost of paper and one piastre clerk's fee will be taken from persons who wish to take out title-deeds during the said time, and if there are any persons who wish to exchange their old trustworthy title-deeds, only three piastres' cost of paper and one piastre clerk's fee will be taken from them also, and the tabulated forms will be filled up and sent to the Imperial Evkaf Treasury. This course will depend entirely on the owners themselves showing a desire.

Sale of
partner's
share in
land.

14. When only a known share of land held in partnership is going to be alienated to another it will be offered to the partner, and if he refuses to take it a deed will be taken from him and the matter will be

noted in the alienation column of the tabulated certificate. When land held in partnership is going to be separated and divided, as stated in Art. 15 of the Imperial Land Law, it will be divided in an equitable manner. A note will be made in the alienation column of the said tabulated form that it has been divided in accordance with the law, and the title-deeds in their possession will be changed.

Division of
partner-
ship land.

15. If a portion of a place held by one or several title-deeds has been separated and alienated to another in accordance with the rule that will be carried out in other alienations, a certificate will be issued to the alienee, and its other procedure will be carried out. As the boundaries and amount stated in the old title-deeds in the possession of the owner will be changed on account of such separation of a piece, the title-deeds will be changed.

Certificate
of sever-
ance.

New title-
deeds.

16. When persons to whom certificates cut out of the counterfoil registers in accordance with the system now adopted have been issued are going to alienate to another the places before the arrival of the title-deeds from the Imperial Evkaf Treasury, after the alienation fees have been taken in accordance with the rule, another certificate will be issued to the alienee, and in accordance with the system the certificate in the hands of the alienor will be attached to the duplicate of the new certificate issued to the alienee and sent to the

Sale before
receipt of
new title-
deeds.

Delivery of
new title-
deed.

Disposal of
old one.

Imperial Evkaf Treasury. In the column for "Cause of Issue of Title-Deed" in this new tabulated certificate will be written "as the title-deed has not yet been received from the Imperial Evkaf Treasury, the old certificate is sent herewith attached." If the title-deed in accordance with the old tabulated certificate has been prepared and sent to its destination before the arrival of the new tabulated certificate at the Imperial Evkaf Treasury, it will be kept at its destination, and when the title-deed prepared in accordance with the new tabulated certificate arrives at its destination it will be delivered to the alienee, and the detained title-deed will be attached to the certificate taken from him and returned to the Imperial Evkaf Treasury. Exactly the same procedure will be carried out concerning persons who possess temporary certificates and who die before the arrival of the title-deeds.

CONCLUSION (3).

If any doubts arise in the execution of the new system, explanation must be asked for from the Imperial Evkaf Treasury.

25. Ramazan, 1281.

9. February, 1280.

IX. INSTRUCTIONS (1).

It being one of the requirements of the Imperial Decree that the legal procedure of Arazi Mevkufé should be assimilated to the Imperial Land Law (2) in force up to the present published in the beginning of Zilhijé, 1274 (3), and it being necessary that the duties and other proceedings of the Arazi Mevkufé officials should also as far as possible be in accordance with the Arazi Mirié system, it is necessary that the title-deeds issued henceforth in accordance with the Provincial Title-Deeds Law now drawn up should be put under a symmetrical organisation and law. Printed tabulated certificates having now been prepared to take the place of the temporary certificates issued by Evkaf Mudirs until the arrival of the title-deeds issued to owners of Musakafat and Musteghillat from the Imperial Evkaf Treasury, it is not necessary to change the temporary certificates issued locally up to the present and for which the fees and cost have been taken for these printed certificates; but, as it is decided that these printed certificates should be given for title-deeds issued hereafter, these Instructions have been prepared in order to explain the procedure which should be

Uniform
system
adopted.

carried out concerning the said printed tabulated forms of certificate.

Forms of
certificate.

1. The said tabulated forms of certificate are in the form of bound registers. Commencing with 1, different numbers have been put in these registers for each place where there is an Evkaf Mudir. Each register contains two hundred forms of certificates, and each form of certificate is in triplicate. The certificates in each register will be used commencing from the left, the first will be numbered 1 and so on up to 200. In order to explain how they are to be used ten specimens of certificate and one specimen of the register with Mazbata at foot to be sent to the Treasury have been sent to each place where there is an Evkaf Mudir.

Certifi-
cates: how
filled up.

2. In the event of alienation and inheritance, and on issue of title-deed to those who have none, and on exchange of old title-deeds in fine, as shown in the specimens, the name of the Sanjak will be written by the side of the word "Liva" in all three copies of the certificate; the name of the Kaza in which the place is situate will be written in line with the word "Kaza," if the place is attached to a town, as in specimens 1, 3, 4, 5, 7, 9 and 10; the name by which the place is known will be written by the side of the word "town" thus—"place in the neighbourhood or within the town," if it is in the boundaries of a village, as shown in specimens 2, 6 and 8; the name of the village will be written by the side of the word "village." In the column in which

are written the numbers of the volume and registration of the old title-deed, to the left of this column, as shown in the specimens, if there is a title-deed issued in accordance with the new law, the numbers of the volume and registration put on the said title-deed will be put in these columns. In the line of the word "superintendence" the words "Mazbut from Haremein," as shown in specimens 2, 7 and 8, will be written if the Vakf is under Haremein superintendence and Mazbut; and the words "Mulhak to Haremein," as shown in specimen 1, will be written if it is Mulhak; and the words "Mazbut from Imperial Evkaf," as in specimens 3, 4 and 6, will be written if the Vakf is under Imperial Evkaf superintendence and Mazbuta; and the words "Mulhak to Imperial Evkaf," as shown in specimens 5, 9 and 10, will be written if it is Mulhak. In the line of the word "benefice," if the benefice of the Vakf is known, its nature and the quarter in which it is situate will be written, as shown in specimens 2, 3, 5, 6, 9 and 10. By the side of the word "Vakf" the name and title of the Vakf will be written, as shown in all the specimens. In the line of the word "boundaries," and in the columns of the word "side," the present true boundaries will be written, as shown in all the specimens. If it is land for which the expression "occupying seed" is used, as in specimen 2, the amount of seed which the land receives will be written in the seed column by the side of the word "seed." If the expression donum is used, as shown in specimens

Certifi-
cate:
how to be
filled up.

Certifi-
cate: how
to be filled
up.

5, 6, 8 and 9, the number of donums of land will be written by the side of the word "donum." If it is Musakafat and the number of ziras of the site is known, the number of ziras will be written as shown in specimens 1, 7 and 10. If it is Musakafat and the number of ziras is not known, or if it is a Gedik, it will be left open, as shown in specimens 3 and 4. If it is mixed with another Vakf, as shown in specimens 1 and 2, the words "mixed with—Vakf," or "mixed with another Vakf," will be written in the small column to the left of this column, separated by a line. All the contents will be written by the side of the word "contents," as in specimens 1, 3, 4, 7 and 10. Then the column for the nature of the place will be filled up thus:—If it is a titheable place, arable land, or meadow will be written by the side of the word "titheable," as shown in specimens 2, 5 and 8. If it is a place paying a fixed equivalent of tithe, such as meadow, vineyard, Chiftlik, wood, forest, mill, threshing-floor, uncovered or covered sheepfold, &c., the word vineyard, or garden, or whatever it is, will be written in the line of the word "fixed," as shown in specimens 6 and 9. If the said kinds of lands and places are attached to a Chiftlik, in order to know their subjection to such Chiftlik, in the certificate for each title-deed "Subject to—Chiftlik" will be written in the small column to the left, as in specimens 2 and 6. After the words "Chiftlik site" have been written by the side of the word Mukata if it is Mukata, and by

the side of the word Ijaré if it is Ijaré, in the certificate issued for the site of the Chiftlik building, the name and title of the Chiftlik will be written in the said small column. The annual ijaré of properties held in ijaratein (4) will be written in the line after the words "house or shop," as shown in specimens 1, 3, 4 and 10. For such places as garden, bath and khan, the words garden, bath and khan will be written instead of house and shop. Then the column for "reason of issue of title-deed" will be filled up thus:— If there is an old title-deed, the words "in exchange" will be written, as in specimens 1, 3, 4 and 6. If the title-deed has been lost, the words "on account of loss" will be written, as in specimens 2, 5 and 7. If the date of the lost title-deed is known, it will be noted in the line of the sentence "on account of loss," as in specimen 7. As there is much waste (Khali) land belonging to the Evkaf, which is from time to time leased by auction to the candidate, the facts will be recited in the column for "reason of issue of title-deed," as in specimen 8, and the word "new" will be written. As some owners of houses and lands will lose their title-deeds and apply to the Vakf for new ones, the facts will be stated as shown in specimen 9, and the words "on account of loss" will be written. The facts relating to title-deeds exchanged will be stated in the column for "reason of issue of title-deed" in the certificate, as shown in specimen 10, and the words "in exchange" will be written.

Certificate: how to be filled up.

Certifi-
cate: how
to be filled
up.

Considera-
tion to be
stated.

Facts as to
inheritance
must be
stated.

3. When the alienation of land, houses, &c., is being carried out: Firstly, the columns stated in Art. 2 will be filled up. Secondly, as shown in specimen 1, the name and address of the alienor and his father, and definite alienation, will be written by the side of the word "alienation," and the real price for which the place has been sold will be written in the column for price of alienation, as in specimen 1. If a property is going to be mortgaged (Istiglal), or is going to be freed from mortgage (Istiglal), after the procedure as before stated in Art. 2 has been entirely carried out, if it is going to be mortgaged (Istiglal) "on account of mortgage (Vefaen Féragh) to —, son of —," will be written in the line as in specimen 3. If it is going to be released from mortgage "cancellation of mortgage (Féragh) to —, son of —," will be written by the side of the alienation column, as in specimen 4. As in both specimens 3 and 4 the amount of the price received will be written in the line for "equivalent of alienation;" the "equivalent received" if it is a mortgage (Istiglal), and "the price received" if it is a cancellation. When the inheritance of a property is going to be carried out, after the procedure stated in Art. 2 has been carried out, if the property has been inherited from the father, "on account of the death of the father, —, son of —," will be written, as shown in specimen 2. The same will be written if it is inherited from the mother, or if, being land, it is inherited

from the son or daughter. The date of the death of the deceased will also be noted. The estimated value will be written by the side of the words "estimated value."

4. After the procedure stated in Art. 2 has been carried out with regard to certificates issued to owners of the right to Tapu (5), the name of the deceased, the date of decease, and the relationship of the owner of the right to Tapu will be written by the side of the printed sentence "right to Tapu," as shown in specimen 5, and the Tapu value estimated by unbiassed possessors of knowledge will be written in the column for equivalent value.

Certificate: how to be filled up as to land inherited.

5. In cases of pure Mahlul property conferred by auction, as shown in specimens 6 and 7, the manner in which the property became Mahlul, that is to say, if there is no owner of the right to Tapu, or, if there is one and he abstains, will be written by the side of the sentence "Pure Mahlul," and the price fixed at auction will be written in the column for auction price. If it is waste (Khali) land of a Vakf, and it is leased by auction to the candidate, as in specimen 8, the price fixed will be put in the column for auction price.

Facts as to Mahlul property to be stated.

6. The name, address, profession, and name and address of the father of the possessor of every kind of Musakafat and Musteghillat, will be written in the column for name of possessor.

Description of ancestor to be given.

7. The fees taken, as stated in detail in the Instruc-

Fees :
what to be
taken.

tions (6), will be written in the fee column, as shown in specimens 1, 2, 3 and 4, and the rate per mille at which they have been calculated will be noted in the place entitled "Per Mille" to the left of the said column. The three piastres taken for each title-deed will be entered in the column printed "Cost of paper." The one piastre taken for each will be written in the column for "Clerk's Fee." If there is any uncollected Ijaré, or Mukata, it will be taken on account at the time of alienation and inheritance, and will be written in the Ijaré column if it is Ijaré, and in the Mukata column if it is Mukata. In cases of Mahlul only the cost of paper and clerk's fee will be entered. The total will be added up according to the system of calculation shown in the specimens, and entered in the column for "Total." Under the words "Registration Number in the Receipts Register," to the left of the total column, the number of the register sent to the Treasury with these tabulated forms will be written.

Foot of
certifi-
cate: how
to be filled
in.

8. After the procedure stated above has been entirely carried out, and the three copies of each certificate have been filled up in the manner explained, as shown in the specimens, in the first of the empty spaces among the lines at the foot of the tabulated form of certificate to the right, the nature of the property, and if it is in partnership, as in specimen 3, the number of shares will be shown. In the second the name of the future holder, and of his father, will be written. In the table

to the left of the foot of the tabulated forms of certificate that will be sent away and that will remain as counterfoils, the details of the sums that will remain in the locality will be entered. Thus, in the Treasury share of the fees of alienation, inheritance, mortgage (Istiglal), and cancellation of mortgage (Istiglal), that is to say, one-fifth of half the fees, will be separated and entered in the column for "Mudir's fifth," in the small table in which is written "fifth detained locally for Mudir and others" in the second table of each specimen. In accordance with the ancient system, the shares of Mutevelis with Berats, Clerks, and Jabis, will be delivered to them, and, as shown in the specimens, each one will be entered in its proper column. If it is necessary that the Ijarés and Mukatas taken at the time of alienation, inheritance and mortgage (Istiglal) should be detained and delivered locally, they will be detained and entered in the columns for Ijaré and Mukata. The total will be added up in an arithmetical system and entered in the column for total. The places for date will be filled up, and the Mudirs will seal under the places printed "Mudir of Evkaf." If it is a Mulhaka Vakf, and the Muteveli is in the locality, the Muteveli of the Vakf will seal under the places printed "Muteveli of Vakf." A note will be made if the Muteveli is not in the locality. In cases of Mahlul, the shares of the servants detained locally will be shown in the registers sent away; no note will be made in the tabulated forms of certificate.

Foot of
certifi-
cate: how
to be filled
in.

Seal of
Muteveli.

Separation
of the cer-
tificates.

9. After all the registration procedure stated above has been carried out, the tabulated form of certificate will be cut at the place to the right, that is to say, where "to the Imperial Evkaf Ministry" is written at the top, as shown in the specimens, and given to the future owner. Then the second tabulated form of certificate will be cut and attached to the old title-deed of the property, if there is one; if not, it will be kept by itself. Except in cases of Mahlul, all the tabulated forms of certificate collected during one month, and the old title-deeds attached to them, will be sent, together with the Receipts Register with Mazbata at foot, direct to the Treasury. As one copy of this Receipts Register to be sent has been sent as a specimen, it will be prepared as shown in this specimen. The certificates of Mahluls will be sent once every three months, together with the Detailed (Mufredat) Register.

Transmis-
sion of
tabulated
forms.

Third part
of the cer-
tificate to
be kept.

10. Two tabulated forms of each certificate will be cut out in the manner stated, the third will remain in the stump of counterfoils, and be kept locally for the accounts to be seen in case of necessity, and to be referred to. The predecessors of the Mudirs of Evkaf will make a complete handing over to their successors. If one counterfoil is missing at the time of handing over, it will not be accepted, but reported to the Imperial Treasury. If it is accepted without informing the Treasury, the responsibility will lie with the person

who accepts. They will also completely deliver the specimens, instructions, descriptive instructions, and copy of the register.

25. Ramazan, 1281.

9. February, 1280.

X. COPY OF IMPERIAL KHAT (1) (2).

“LET BE DONE ACCORDINGLY.”

With the intention of facilitating the procedure, and commerce and agriculture, and in that way the richness and prosperity of the country, the following Imperial permissions which have been decided on concerning the mode of inheritance of Mirié and Mevkufé land possessed by Tapu are made known.

Rules of
inheritance
to Mirié
and Mev-
kufé.

1. The provisions of the Imperial Land Law concerning the inheritance in equal shares by the children, male and female, of Mirié and Mevkufé (3) land possessed by Tapu, remain as they were, only if the male and female children of possessors of Mirié and Mevkufé land are not living, the land possessed by them shall be inherited equally without cost by, 2, the grandchildren, that is to say, the son and daughter of the male and female children; 3, by the father and mother; 4, by the brother german and consanguineous; 5, by the sister german and consanguineous; 6, by the brother uterine; 7, by the sister uterine, and if there

are none of the heirs enumerated it shall descend, 8, from husband to wife, and from wife to husband (4).

2. While an heir of the first degree of the possessors of the right to inheritance of the degrees mentioned above is living, an heir of the second degree shall not have a right to inheritance; for instance, the land shall not be inherited by the grandchildren when there is a child, or by the brothers and sisters german when there are grandchildren existing; but children of the male and female children who die during the lifetime of their father and mother, shall take the place of the children: the share that would be inherited by their father and mother from their grandfather and grandmother will be inherited by them, but of the land that will be inherited by heirs being possessors of the right to inheritance from the parents to the sister uterine, a share of one-fourth each shall be inherited by the husband and wife. Rules of inheritance.

3. The system of mortgage (Féragh bil Vefa) (5) Mortgage. which is in force for securing a debt, and the conditions and procedure that will make the land of a debtor, which has not been mortgaged (Vefaen Féragh) chargeable as to the debt during his lifetime, or, on his death, will be fixed by special laws.

NOTE.—*The system of Mortgage (Féragh bil Vefa) is stated in Art. 26 of the Tapu Law. And the procedure to be carried out in the lifetime and on the death of the debtor is stated in the Law No. 16.*

Procedure
as to
Chiftliks.

4. The Mirié and Mevkufé land procedure will be completely carried out with regard to Chiftliks and other land which are possessed by Imperial Title Deeds (Mulksnamé (6) Humayan), but the annual rent (Muéjele) which is taken from these in accordance with the special rules shall be taken as before.

Buildings
and trees.

5. The provisions of the Imperial Land Law concerning the possession of buildings and trees on Mirié and Mevkufé land shall be carried out as before (7).

Operation
of law.

6. This law shall be in force from the date of promulgation, and the Imperial Land and Tapu Laws being corrected in accordance with the legal provisions which are stated in the foregoing articles, shall be published and notified (8).

17. Muharem, 1284.

XI. FISCAL REGULATIONS RELATIVE TO THE APPLICATION OF THE PRECEDING LAW (1).

The right of succession to lands Mirié and Mey-
kufé belonging to the domains of the State (Beit-ul-
Mal) was limited until now to the children and the
father and mother of the proprietor. With the inten-
tion of strengthening the right of possession of these
lands in the hands of the holders of them, the limit of
the right of inheritance of these lands has been enlarged
by virtue of the new law promulgated by Imperial
decree dated this day. Increase of
tithe.

In consequence of the advantages which the owners
of these lands will gain by this concession, and as a
compensation for the loss caused to the Treasury by
the suppression of the right of Mahlul, finally, in
return for the new right granted to the owners of
lands, it has been decided that the State will levy the
equivalent of a tithe and a half (15 per 100) from the
annual produce of the land. But, as the levying all at
once and the payment in cash might fall heavy on the

Increased
tax : how
payable.

landholders, the amount of this tax shall be spread over five years, payable in kind from the annual produce, or in money, at the will of the owner of the land. This spreading over five years will be made in the following manner:—

The first year (1283) the payment will be one-third of the tithe and a half, that is, the half of the tithe levied until now on the produce of lands Mirié and Mevkufé; for example, the landholder who pays now one kilo as tithe, will pay besides this kilo half a kilo.

The second year (1284) the payment will be the quarter of the tithe, that is, the landholder who at present pays a kilo as tithe, will pay over and above this kilo a quarter of a kilo.

The third (1285), the fourth (1286), and fifth year (1287), the payment will be a fourth as for the second year; at the expiration of the fifth year the landholder will have to pay only the normal tithe.

New tax
limited to
Mirié and
Mevkufé.

The tithe and a half to be levied, as it is said above, in return for the new right, will be leviable only from the owners of lands Mirié and Mevkufé; whatever may be the produce of the cultivated land, the levying the tithe and a half will be at the charge of the landholder, even in case the land should be let.

This taxation is confined to lands Mirié and Mevkufé held by Tapu; it will not be leviable on the produce of olive trees, mulberry trees, vines, and other fruit-bearing trees.

A tax of 15 per 100 will be levied, in five payments spread over five years, and under the same conditions and proportions as for cultivated lands, on the produce and receipts from non-cultivated lands, such as lands for wintering (Kishlak) and pasture (Yaylak) held by Tapu.

Like tax upon Kishlak and Yaylak.

Lands held by Mulksnamé (Imperial decree) will be treated in the same manner as other Mirié lands; but other arrangements will be made concerning the annual payments which weigh on the lands included in the category of the Emlaki Humayun (2) (Royal Property).

The same as to Mulksnamé lands.

Other lands.

17. Muharem, 1284.

21. May, 1867.

NOTE.—*This transitory law has ceased to be in force on account of the expiration of the term on the one hand, and on the other, on account of an Imperial Decree which the Government has communicated in the newspapers.*

XII. COPY OF IMPERIAL KHAT.

“LET BE DONE ACCORDINGLY.”

Lands
called Mus-
akafat and
Muste-
ghillat.

Subject to the conditions which relate to conforming with the illustrious pious foundations remaining permanent, and not causing any injury to the origin and conduct of the Musteghillat Vakfı, and the conditions of the Vakf being completely carried out as before, the Imperial permissions which have been decided on concerning the system of inheritance of Musakafat (1) and Musteghillat (2) the possession and administration of which belong to His Imperial Majesty, the Great Sultans and their Dependents and Mutevelis being extinct, and the administration remaining with the Imperial Evkaf Treasury, and which are possessed by Ijarétein (3) are made known as follows:—

Rules of
Inherit-
ance.

1. Musakafat and Musteghillat Vakfs which are possessed in Ijarétein shall as before be inherited equally by the male and female children; if there are no existing male and female children, they shall be

inherited in equal shares by 2, the grandchildren, that is to say the children of the male and female children; 3, by the parents; 4, by the brother and sister german; 5, by the brother and sister consanguineous; 6, by the brother and sister uterine; 7, from husband to wife and from wife to husband (4).

Rules of
Inheritance.

2. While there is an heir living who is a possessor of the right to inheritance of the first degree mentioned above, an heir of the second degree shall not have the right to inheritance; for instance, while there are children the grandchildren, and while there are grandchildren the parents, do not inherit Musakafat and Musteghillat Vakf, but the children of the male and female children who die during the lifetime of their father and mother take the place of children, and the share that would be inherited by their father and mother from their grandfather and grandmother will be inherited by them; but of the Musakafat and Musteghillat that would be inherited by an heir being one of the possessors of the right to inheritance from the parents to the brother and sister uterine a share of one-quarter each shall be inherited by the husband and wife. While there are children and grandchildren, the husband and wife shall have no right to take a share in Musakafat and Musteghillat.

3. As compensation for the losses from Mahluls which the Evkaf will suffer on account of the extension of

Increase of tax. inheritance, the Ijaré Muejele of Musakafat and Musteghillat will be increased in a rational proportion according to its value, and this proportion will be fixed by special instruction (5).

Duties upon succession. 4. Fees of thirty per cent. on the alienation and fifteen per cent. on the inheritance by children of Musakafat and Musteghillat Mevkufé will be taken as before established, but the amount of inheritance fees to be taken in accordance with their degree on the inheritance by heirs who are possessors of the right to inheritance of the degrees mentioned above, other than male and female children, will be fixed by a special law (6).

Mortgage. 5. The system of mortgage (Féragh bil Vefa) which is in force for securing debt will be in force as before, and the conditions and procedure which detail this system will be fixed by special laws (7).

Law not imperative. 6. The possessors of the said Musakafat and Musteghillat are not obliged to conform to this law. Those who desire to conform to its provisions can renew the titles for Musakafat and Musteghillat Mevkufé which they possess in Ijarétein, in accordance with the form and system which will be fixed.

7. This Imperial permission is only applicable to Mazbuta Vakfs which are administered through the

medium of the Imperial Evkaf Ministry, and to the illustrious Vakfs of Sultans and their Dependents, the possession and administration of which belong to His Imperial Majesty by trusteeship. It is not applicable to other Vakfs. But the founders of other Vakfs who are alive, and who can if they choose alter the conditions of their Vakfiés, will be permitted to act according to this legal decree.

Limit of
permissive
character
of the law.

8. The procedure concerning Musakafat and Musteghillat of which the building site is Mukata (8) Vakf and the building Mulk, shall be carried out in accordance with its ancient system. On the purchase, sale, alienation, and inheritance of this kind of Musakafat and Musteghillat the ancient Mukata will be augmented to a proper degree.

Applica-
tion to
Mukata
Vakf and
building
Mulk.

9. This law comes into force from the date of its promulgation.

Operation
of law.

NOTE.—*This law bears no date in the Destur, but in the Législation Ottomane it bears date 7. Safer, 1284, see also Arts. 3 and 5 of No. 16.*

XIII. ACQUISITION OF PROPERTY BY FOREIGNERS (1).

In order to extend the riches and prosperity of the Imperial Dominions, and to set aside the difficulties, abuses, and all kinds of doubts which arise from foreign subjects becoming possessors of property, and to put this important matter under a firm law and to complete the financial and administrative security, the law which has been decided on by Imperial Irade is made known as follows:—

Extension
of law to
aliens.

1. The subjects of foreign Governments are allowed to take advantage of the rights to possess property within or without towns in every part of the Imperial Dominions, with the exception of the Hejaz, in the same way as Ottoman subjects, and without being under any other conditions, in the manner stated below, on complying with the laws that govern them in this case. Those who were originally Ottoman subjects and afterwards changed their nationality are

excepted from this rule. Concerning them the provisions of the special law will be in force.

NOTE.—*The procedure to be followed with regard to property (Emlak) and land (Arazi) belonging to persons excepted from this 1st Article is given in a Law approved by Imperial Iradé, dated 25. Rebi ul Akhir, 1300.*

2. Foreigners who are owners of property within or without towns in accordance with the provisions of Art. 1, will be obliged to fulfil the conditions which Ottoman subjects are obliged to in all matters which concern their property. In order to give legal effect to this obligation: 1, he will comply with the laws which are at present and may be in the future in force concerning possession, inheritance, alienation, and mortgage (Istiglal) of property, and police and municipal; 2, he will pay all taxes which Ottoman subjects possessors of property are or may be assessed for, of whatever name or form, within or without cities; 3, they will have recourse to the Ottoman Tribunals in all matters concerning property, and in the event of an action affecting it, whether as plaintiff or defendant or both sides foreign subjects, which will be tried according to the system to which Ottoman subjects possessors of property are subject, the conditions to which they are obliged to conform, and the rights which they have acquired, without the interference of the actual quality of their nationality special to their persons, and having regard to the protection of

Legal position of aliens as to property.

the exemptions which belong to their persons and movable property in accordance with treaties.

Bank-
ruptcy of
alien.

3. In the event of the bankruptcy of a foreigner possessing property, the syndics will apply to the Ottoman authorities and tribunals for the sale of the property possessed by the bankrupt, which by essence and law is permitted to be answerable for the debts of the owner, and if a foreigner has an action against a foreigner who is possessor of property for a matter other than property, and has gained his action by the decision of his Chancellerie, and the sale of the property which is valid to pay the debt of the foreigner who is condemned by this judgment is necessary, the matter will likewise be referred to the Ottoman authorities and tribunals, who will first inquire whether the property which the creditor claims to have sold is of the class permitted by law to be sold to satisfy debt, and afterwards carry out the decision.

Testamen-
tary power
of alien.

4. A foreigner has the power to bequeath his property the inheritance and donation of which by will is permitted; the Ottoman laws concerning *Metruké* will be carried out with regard to property which has not been given or bequeathed, or which the provisions of the Ottoman Laws do not allow to be given or bequeathed.

Succession
to alien's
property.

NOTE.—*It has been notified by Vezirial letter, dated 24. July, 1291, that in the event of the death of a foreign subject possessing property (Emlak) his property (Emlak) and land (Arazi) will be inherited by his legal heirs.*

5. Every foreigner shall take advantage of the ^{Operation} benefits of the provisions of this law as soon as ^{of law.} acquiescence has been given by the Government to which he is subject to the mode prepared which is proposed by the Ottoman Government to be carried out concerning acquisition of property.

End of Jemazi ul evel, 1284.

XIV. INHERITANCE OF MUSAKAFAT AND MUSTEGHILLAT.

APPENDIX.

Fiscal provisions as to Musakafat and Musteghillat.

Law concerning the mode of execution of the provisions contained in the law published by Imperial Iradé on the 17. Muharem, 1284 (1), concerning the extension of inheritance of Musakafat and Musteghillat found in Mazbuta Vakfs and Vakfs of the Sultans and their Dependents.

Yearly tribute.

1. An annual *ijaré Muejele* of forty paras per thousand on the value that will be assessed by possessors of knowledge on the present conditions of Musakafat and Musteghillat *Mevkufé* of which the rights of inheritance have been extended will be fixed, and the ancient *ijarés* of these will be abolished.

Yearly tax upon Gediks.

2. The procedure stated in the last article will also be carried out in *Gediks*, which are possessed in *ijarétein*, but the annual *ijaré Muejele* will be fixed after the value of the Mulk on which they are established has been deducted from their estimated value.

3. The annual rent of the Mulk which is taken from the owner of the Gedik on Musakafat and Musteghillat which are within the Vakfs fixed by law, and on which there is a Gedik, will be reckoned at forty times the value, and an annual ijaré Muejele of twenty paras per thousand will be fixed on however many piastres it amounts to: the amount of the old rent shall never be augmented.

Mode of estimating yearly rent.

4. The amount in excess of the annual ijaré, that will be newly fixed will be paid in the same way as the old ijaré of Musakafat and Musteghillat, in accordance with the special rules for the old ijaré Muejele.

Disposal of excess.

5. When Musakafat and Musteghillat, the rights of inheritance of which have been extended, is inherited, an inheritance fee will be taken of fifteen per thousand as before when by the children, thirty per thousand when by the grandchildren, forty per thousand when by the parents, and fifty per thousand when by the brothers and sisters, german, consanguineous, and uterine, and by the husband and wife, and when they are definitely alienated as before, only thirty per thousand, and when they are mortgaged (Istiglal), cancelled, or released, fifteen per thousand fees will be taken.

Duties on succession.
Duty upon inherited lands in mortgage.

6. On the alienation, mortgage (Istiglal), and inheritance by the children only of the said Musakafat and Musteghillat of which the inheritance has been

Proportion
of fees to
go to Clerk
and Jabi.

extended, quarter of the fees that will be taken, as before, belong to the Clerk and Jabi of the Vakfs, and the remainder to the Treasury for the Vakfs. The whole of the fees that will be taken on the inheritance by heirs other than the children shall be paid to the Treasury and entered as revenue of the Vakfs.

Duty of
heir.

7. It will be obligatory for an heir who has the right of inheritance to cause the process of inheritance of Musakafat and Musteghillat which will be inherited by him to be carried out either by himself or by agent within six months if it is in Constantinople, and within one year if it is outside.

Applica-
tion of new
law to
mixed
Vakfs.

8. When the possessors of Musakafat and Musteghillat which belong to various and mixed Vakfs wish to become subject to the new law, the site of every Vakf will be measured and delimited, and title-deeds in accordance with the new system will be prepared for places which are within the Vakfs fixed by the law. Whether the Vakfs of the Musakafat and Musteghillat of this kind of numerous and mixed Vakfs are all of the kind described by the law, or whether some of them are of that kind and the others Meshruta Vakfs, separate ijarés for each Vakf will be fixed in accordance with whatever share of the value that will be assessed on the present state of the said Musakafat and Musteghillat falls to the share of each Vakf.

Separate
ijarés.

9. If one of the possessors of Musakafat and Musteghillat which is possessed in partnership or undivided wishes to make it subject to the new law, and the other partners do not acquiesce, if it is possible to separate the partners and divide this kind of Musakafat and Musteghillat the share of the willing partner will be separated, and a title-deed in accordance with the new system will be prepared ; if it is not capable of division in accordance with the provisions of the law, a new title-deed will be delivered for his commonly known share.

Division of partnership land.

New title-deed for severed part.

10. It will be sufficient to collect whatever amount of the *ijaré Muejele* falls to the value that will be reassessed on only the building sites of the said Musakafat and Musteghillat which have been burnt or destroyed after the said *ijaré* has been fixed in accordance with the rules stated above. The amount which falls to the share of the burnt or destroyed building will be deducted.

Amount of *ijaré* in case of destroyed buildings.

11. If buildings are built on sites on which the buildings have been burnt or destroyed, or which were originally free from buildings, after the *ijaré* has been fixed in accordance with the new rules on the site, the present condition of these kinds will be newly estimated and their *ijarés* renewed and fixed at the rate of forty paras per thousand piastres on their value, that will be fixed approximately by possessors of knowledge.

Increase of *ijaré* upon erection of buildings.

Valuation
made only
once every
five years.

12. The amount of the special *ijarés* of **Musakafat** and **Musteghillat** of which the *ijarés* have been newly fixed in accordance with the rules for the extension of the rights of inheritance will not be increased or diminished on account of the increase or decrease of the value of the properties for five years from the date of the preparation and delivery of the titles that will be given in accordance with the new system, but once in every five years the actual values of the said **Musakafat** and **Musteghillat** will be examined, and the *ijarés* will be renewed and modified.

Marginal
notes on
deeds for-
bidden.

13. Marginal notes will not be written henceforth on the title that will be given in accordance with the new system ; in the event of alienation, inheritance, separation, and division, new title-deeds will be prepared and delivered, and the old title-deeds taken and kept in abrogation.

2. Zilkadé, 1285.

XV. LAW CONCERNING CONDITIONS
FIXING THE SECURING OF DEBT
AFTER DEATH BY ARAZI MIRIÉ
AND MEVKUFÉ, AND MUSAKAFAT
AND MUSTEGHILLAT VAKFIÉ (1).

PREFACE.

As has been promised in Arts. 5 of the Law concerning the Extension of Inheritance of Musakafat and Musteghillat Vakfs, and 3 of the Law Extending Inheritance to Arazi, modifying the provisions of Art. 28 of the Tapu Law, the procedure that will be followed during the lifetime of the debtor for debt to be paid after his death from the value of the land which he has mortgaged (Vefaen Féragh) for securing debt, or of the Musakafat and Musteghillat Mevkufé, of which the right to inheritance has been extended, has been fixed by this law.

Remedy as
to lands of
debtor.

1. When a possessor of Arazi Mirié and Mevkufé is going to mortgage (Vefaen Féragh) the land which he

Method of mortgaging. possesses by Tapu to his creditor, he is obliged to act, firstly, in accordance with the conditions which are contained in Art. 26 of the Tapu Law (2).

Mortgage money payable firstly out of debtor's movables. 2. If a person mortgages (Vefaen Féragh) to his creditor by means of the authority, in return for the debt, the Arazi Mirié and Mevkufé which he possesses and dies before paying it, the said debt like other debts shall be paid from the movable property of the debtor; if he has no movable property or his existing movable property does not cover his debts, whether the debtor has an heir having the right to inheritance, or there is an owner of the right to Tapu (3) or not, a sufficient quantity of that land to cover the debt will be conferred by auction on the candidate for its equivalent value, and the said debt shall be paid.

Application of Art. 2. 3. The provisions of Art. 2 shall be carried out also in Musakafat and Musteghillat Mevkufé of which the system of inheritance has been extended in accordance with the law dated 13. Sefer, 1284 (4), and the Ijaré Muejele increased to the equivalent amount (ejri misl).

Mortgagee limited to mortgaged land. 4. If the value of the Arazi, Musakafat and Musteghillat mortgaged (Vefaen Féragh) is not sufficient to pay the debt of the deceased debtor, the creditor shall not be able to interfere with other Arazi, Musakafat and Musteghillat in the possession of the debtor

which has not been mortgaged (Vefaen Féragh) for the arrears of his claim (5).

5. This law is an appendix to the laws dated Operation. 17. Muharem and 13 Sefer, 1284 (4), and will be in force from the date of publication.

23. Ramazan, 1286.

XVI. LAW CONCERNING THE MORTGAGE (TERHIN) OF PROPERTY (1).

Method of
mort-
gaging.

1. When a property is going to be mortgaged (Terhin), first, a certificate sealed by the Mukhtar and Council of Elders of the quarter or village stating that the property has no encumbrance such as being mortgaged (Terhin) to another place or under sequester, will be got and shown to the Mejlis Temyiz if at the head quarters of a Liva, and to the Mejlis Daavi if in a Kaza, and after the title-deeds of the property have been examined without delay by the Mejlis, and it has been verified that there is no kind of encumbrance, the certificate will be kept and a permission will be given; the permission will be shown to the Mehkeme Sheri of the Kaza in which the property is situate, and it will be necessary to get a mortgage (Rehn) hujet from there.

Register of
mortgages.

2. A register will be kept by the Daavi and Temyiz Mejlises for mortgage (Terhin) proceedings, and directly the permission has been given for a property to be mortgaged (Terhin) it will be entered in that

register. The record will be amended on application to the said Mejlises at the time when the cancellation of the mortgage (Reh^u) takes place.

3. No fees will be taken by the Councils of Elders, ^{Fees.} Temyiz and Daavi, when carrying out these proceedings. Only the fees for Hujet will be taken by the Mehkeme Sheri.

Date of Imperial Irade—

21. Rebi ul akhir, 1287.

8. July, 1286.

XVII. LAND LAW, 1274.

SUPPLEMENTARY ARTICLE.

Grant of
land to
military.

The privilege of receiving gratis five donums of the land to which the right to Tapu is possessed, is granted to officers of the Regular Army (Asaker Nizamié) whether retired or not, and to retired privates of the same branch. Two and a half donums each of the land of which the right to Tapu falls to them, will be granted gratis (Bila Bedel) to all soldiers who have passed the requisite number of seven years as a soldier and entered the category of Redif, whether they have actually served as a Redif or not.

Persons paying the equivalent to service in the Regular Army are not entitled to this privilege.

25. Muharem, 1287.

XVIII. INSTRUCTIONS CONCERNING TAPU AFFAIRS (1).

1. Until the land registration is complete there will be in each Sanjak one land official, and two or, in case of necessity, three clerks, and in each Kaza one Tapu clerk. As a centre to all these there will be at the centre of the Vilayet one official with the title of Defter Khané Khakani Mudir and an assistant. Under the direction of the Mudir there will be an office with seven clerks, one for each Sanjak. The Kaza clerks will have recourse to the land official at the capital of the Sanjak, who will have recourse to the Tapu Administration at the centre of the Vilayet. All responsibility to the comptrollership of the Defter Khané Khakani will rest with this Administration.

2. Though the procedure regarding land will be carried out in accordance with the provisions of the Imperial Land Law published on 7. Ramazan, 1274 (2), and the system and rules pertaining to the office and registration will be supervised and carried out in accordance with the provisions of the law and instructions published on the 8. Jemazi ul akhir, 1275 (3), and 15. Shaban, 1276 (4) (5), the explanation of some

Land
officials.

Explana-
tion of new
system.

Explanation of new system. matters is necessary in consequence of the new system of Vilayets.

Tapu title-deeds. Land for which Tapu title-deeds will be issued, and of which the issue is necessary, is divided into different classes.

First division. The first is title-deeds that will be issued for alienation and inheritance (6), the procedure necessary concerning these is specifically contained in the laws, instructions, and Imperial Orders in this respect, the provisions of which will be carried out (7) (8) (9).

Second class. The second is, that according to the provisions of the law the title-deeds of persons who possess land under title-deeds issued by Multezims and Muhasils under the old system will be changed on their accuracy being ascertained, and new Tapu title-deeds will be issued to persons who have no title-deed, but who have established their prescriptive right on account of having cultivated the land for ten years (10).

Proof of prescriptive right. Though this will be done, in some places title-deeds are produced with unknown and false seals purporting to be those of Multezims and Muhasils, and persons are being confirmed in the possession of land merely by claiming that it has been in their possession for ten years. As it is stipulated in the law that, in order to prove the accuracy of these title-deeds and to establish the prescriptive right, a person should cultivate the land for ten years successively, care must be taken to inquire into this, as otherwise the prescriptive right will not be acquired by a person who has not cultivated

the land, or has only cultivated it once or twice, even though he may have possessed it for more than ten years.

The third are Mevat lands, woods, and Jibal Mubah Third division. that are not required by the Government, with the exception of those that will be granted to immigrants (11), woods that have been assigned to the inhabitants of a town or village for collecting firewood (12), and woods and forests that have been granted to a Chiftlik owner or attached to a Vakf. The granting of these according to the rules stated below is the duty of the land officials.

And as it has been found that difficulties arise by Inspection of boundaries. the registration on the simple statement of the boundaries of land (as has been tried in some places), all the lands of the Kazas in each Sanjak will be verified, village by village, and, with the exception of those for which Seneds according to system, rule, and reality are shown, they will be registered, and in whichever of the three categories mentioned above they are included, the requirements according to the system decided on concerning that category will be carried out.

3. Notice will be given to the Mejlis Idaré of the Notice as to woods on Mevat land. Kaza (13) in which woods on Mevat land which, as stated in the preceding article, should be sold, and land not belonging to anybody, or in excess of Meras, which should be granted, are situate. In accordance with this decision, these lands, woods, and forests will be divided into several classes, and prices

Disposal of
woods and
forests on
Mevat
land.

according to their estimation, locality, and surroundings will be fixed, and the matter will be notified to persons who have need and are candidates for the land and woods. After the price, piece by piece, according to the number of donums, has been fixed at auction in the Kaza Mejlis, the transfer is to be carried out. A separate Bedel Ushr at the rate of ten or twenty paras per annum per donum will be fixed according to its locality and estimation, and the amount is to be noted in the title-deed issued. Though permission is given, and new title-deeds are issued for certain thickets which cannot become forests, or are in excess of requirements, to be newly opened up into arable land, in places where forests are scarce, or are of greater necessity, in order that the thickets may take the form of a forest, permission will not be given for them to be made into arable land. But as it has been decided to confer for a low price these thickets as woods on candidates who engage to protect and allow them to grow, the inquiries in this respect should be carried out with great care. And as it is also very necessary to distinguish which of these thickets should be protected by Government, as will be ascertained by the requirements, size, and importance of the locality, in case of hesitation and doubt the matter should be reported to, and instructions sought from, head-quarters. It is the duty of the said officials to give attention to these matters also.

Thickets.

4. As the Yoklama one by one of the lands of the

villages in each Kaza, as stated above, and the bringing to light of lands which should be granted, sold, and for which title-deeds should be issued depends on the Kaza Tapu Clerks personally visiting the villages and making inquiries, the Tapu Clerks in the Kazas will go to the villages, whether the registration has been made before or not, assemble the Ikhtiar Mejlis, in their presence refer to each person's Tapu Sened, if possible compare the land with the title-deed; point out the concealed and Mahlul land and those to whom new title-deeds should be issued on verification of their possession in accordance with the law, and if there are any lands or woods which should be sold, bring to light their true extent. The adjudication of the woods, lands, &c., to be sold by auction in accordance with the last article should take place in the Kaza Mejlis Idaré, and if big, that is to say more than several hundred donums and their price great in accordance therewith, in the Liva (14) Mejlis. In both cases the result of the auction should be confirmed by a Mazbata. The assessment of the equivalent value (Bedel Misl) of land conferred on possessors of the right to Tapu (15) should also be made in the Kaza or Liva Mejlis. Matters which Tapu Clerks will carry out in the villages are verification of simple inheritance, prescriptive right (Hak Karar) and renewal of old title-deeds. They will verify and fix by the evidence and information of the Ikhtiar Mejlis and other possessors of knowledge in the village the circumstances, quantities,

Personal inspection by Tapu clerks.

Choice of lands, &c., to be sold by auction.

Valuation.

Duties of Tapu clerks.

Duties of
Tapu
clerks.

and boundaries of arable lands, meadows, woods, &c., of which the simple inheritance or prescriptive right has been legally proved by being cultivated by a person for more than ten years, or of which the renewal of the old titles is sought. They will fill in the tabulated form according to law; notify to the owner the customary fees, cost of paper, and clerk's fee, and after having entered them in a tabulated register kept for each, on completion they will read aloud to the Ikhtiar Mejlis the boundaries, extent, fees, clerk's fee, &c., of each person's land and cause the end to be sealed. They will make a list in the "chain" system showing the number of piastres to be collected from each person for fees, clerk's fee, and cost of paper, the name of the alienee, and the amount of money, and leave it with the Mukhtar for collection.

Tapu clerk
to fill up
certifi-
cates.

5. When the Tapu clerk has made such a register of a village and entered all its lands and caused those about which a decision has been given in the village to be confirmed by the Council of the Elders, before commencing another village he will fill up the counter-foils of certificates. The bottom of these certificates will first be sealed by the Tapu clerk, and according to the importance and necessity of the collection of the money of which the collection through the village Mukhtar has been decided, one of the Kaza collectors serving in that division will be sent, and as the money is collected and received it will be delivered to the

Treasurer with the certificates. After the examination and comparison has been carried out there, and the clerk's fee belonging to the Tapu clerk has been separated, the balance will be entered as revenue to the Treasury, upon which the certificates and counterfoils in which this money has been previously entered will be sealed by the Treasurer and Kaza Mudir, and the certificates delivered to their owners through the Mukhtars. A Mazbata showing the amount received during the month, together with the counterfoils, will be sent every month to the capital of the Sanjak. Equivalent value matters which cannot be decided in the village and woods and other lands which should be sold by auction if they are of the degree which can be decided in the Kaza Mejlis, villagers and candidates from outside and other persons having necessity will be summoned to the capital of the Kaza at a fixed time on the Mejlis carrying out the necessary proceedings in accordance with the rules. In accordance with the Mazbata that will be taken, the certificates and necessary proceedings will be carried out in accordance with the system that is stated above.

6. The Tapu clerk will thus occupy himself in personally making inquiries in the villages, filling up certificates and counterfoils, and examining land that will be conferred by auction and given for its equivalent value, and at the end of the month he will inform the Tapu official at the capital of the Liva how many

Appropriation of fees.

Report by Tapu clerk to head-quarters.

Report by Tapu clerk. certificates have been issued every month in a Kaza, how much the fees and cost of paper amount to, and the month in which they have been brought to account as revenue in the cash book of the Kaza. In order that the Kaza Tapu clerks may carry out all these duties in a proper manner and be expeditious and dexterous in registration, they must employ the necessary number of assistants and clerks until the work of registration is finished. These assistants and clerks will be paid pro rata, or by the job, out of the forty paras which belong to the Tapu clerks.

Assistants.

Duties of officials at capital of Sanjak.

7. Though the fundamental duties of the Land officials at the capital of the Sanjaks are—

To pay attention to the constant movements and proceedings of the Kaza land clerks and to compare the registration work with the law, and to bring about its execution expeditiously ;

To search for the Mahlul and concealed land and to bring it to light, and to see personally, if necessary, the Arazi Mevat, forests and woods to be sold anew, to put them to auction, and to search for their real value ;

In the event of mistakes being made by the Kaza Tapu clerks, or if any of them appear unfit, to report at once to the Mejlis Idaré of the Liva, and to do what is necessary ;

To keep a tabulated summary register for each Kaza at the capital of the Sanjak, to examine the

counterfoil certificates coming from the Kazas, have them entered in the Summary Register by the clerks under them, and to send them to the capital of the Vilayet immediately; to get counterfoil certificates from the capital and send them to Kazas where they are required; if there is any money outstanding on account of fees, cost of paper, and clerk's fee collectible according to the registration to write to the Kaza Mudirs to collect it at once and not to allow any arrears;

To confer with the Sanjak Mutessarif in all cases, to ask him in case of difficulty, and to ask for the authorisation of the Central Administration for the things required according to the work;

As the degrees of such states and the execution according to desire is according to the intellect of the official, the system stated above will be taken as a basis of duty: the adoption and execution of whatever further degree of care is necessary for the attainment of the object in accordance with this basis will be a cause of praise concerning the officials.

8. It being under consideration to transfer to the Tapu officials and clerks the execution of the necessary office and registration work concerning land belonging to Vakfs, and the issue of title-deeds special to them when it is decided, details and conditions will be given in separate instructions (16). Though it is not necessary

Affairs as
to Vakf
lands.

Different
classes of
land to be
disting-
uished.

to do anything with regard to the Evkaf land now, as the officials will be held responsible if they give Arazi Mirié certificates for places belonging to Vakfs and carry out the Evkaf procedure for Erazi Mirié, and as the kind and condition of each is stated in the Summary Register kept by the Tapu official, care must be taken to distinguish these in the registration now carried out.

Staff of
Tapu
Office.

9. The Tapu office at the capital of the Vilayet under the management of the assistant Mudir will be composed of seven clerks, each assigned to one Sanjak and one Registrar of Papers; the whole will be under the supervision and responsibility of the Mudir. When the Sanjak officials are chosen and appointed the Registrar necessary at the capital will also be chosen and appointed. On application for authority from the Vilayet other clerks besides these will be employed in future when it is considered necessary to fill in and compare the permanent Tapu title-deeds with the Imperial cypher in accordance with the counterfoils received from each Sanjak. The clerks of each Sanjak will first examine whether there is anything contrary to law and rule among the title-deeds received, after the Tughra title-deeds in accordance with them have been filled in and compared, the number of papers in a set, the number of the set, the name of the alienee and the total of all will be filled in the columns of a separate printed journal, and after the

foot has been sealed by the Defter Khakani Mudir of the Vilayet, together with the title-deeds and Mazbatas will be sent with a despatch from the Vilayet to the Defter Khané Khakani.

10. The salaries of the Mudir, Assistant, Clerks and Registrars of the Tapu Office at the Capital of the Vilayet, and the Tapu Officials and Clerks at the Capitals of Sanjaks will be paid by half the three piastres cost of paper of certificates issued under the new system, and from the known sum which, by Imperial decree, is ordered to be detained as a set-off for those who are permanently employed in the Vilayet, whose salaries are paid by the Treasury, and as the other half of the cost of the Tapu paper will be sent as before to the Defter Khané Khakani, there will be an administration safe under the supervision of the Defter Khakani Mudir and his assistant, and under the care and management of the Guaranteed Registrar of Papers at the Centre, and a journal of the revenue and expenditure, and two separate books showing the nature and details of the collections into and payments out of this safe will be kept. Consequently the three piastres cost of paper paid to the Treasury by means of the Tapu clerks in the Kazas and sent from there to the Treasury at the capital of the Liwa will be taken by the Tapu officials on giving a receipt to the Treasury, and the sixty paras of this belonging to the Defter Khané Khakani being separated after the salaries of

Salaries of
officials.

Salaries of
officials.

the Tapu official and clerks at the capital of the Liva have been paid against receipt from the other sixty paras, the balance will be sent to the central Tapu office, and the half of the cost of paper will be sent as usual from the place of origin direct to the Defter Khané Khakani. After the salaries of the local officials have been paid from half the cost of paper received in the Livas, as the balance, will be paid into the said safe after the sums decided to be paid to the Printing Office at the fixed rate as cost of printed paper at the Centre have been paid by Sened to the Printing Administration, and the salaries of the Mudir, Assistant, and Clerks have been paid from this revenue, also, the balance, in short the surplus after the approved salaries and expenses have been paid, will be detained as a set-off against the expenses of future months. If the monthly receipts from half the cost of paper at the capital of the Liva are not sufficient for the salaries of the officials, as it will be necessary that the balance should be paid from receipts of future months, and that this system and rule should be observed at the centre also, and at the end of the year: (a) by taking a general account of the Tapu Administration safe; (b) by paying any unpaid expense, if found, on account of the Liva Memours' salaries and expenses which have not been paid, also from the surplus revenue, if any, after the salaries and expenses paid up to the end of the year, whether from the revenue arising from half the cost of paper or whether

taken from the Treasury as old assignments and salaries have been deducted; (c) by delivering the surplus to the Central Treasury and entering it as revenue for the Imperial Treasury, it will not be permitted to transfer the revenue of one year to another year, and, at the end of the year, if the surplus revenue, after deducting expenses, does not completely cover all the unpaid salaries and expenses by dividing and paying it in proportion to the amount of the unpaid salaries, the account of that year will be closed.

11. The title-deeds sent to the Defter Khané Khakani will be registered and sealed there also after they have been examined, and the sealed journal being kept as a receipt until the arrival of the certificates that are subsequently collected and sent, the Tapu title-deeds will be returned to the Centre of the Vilayet exactly as they are in sets, and if there are any among them contrary to law and system their requirements will be explained or corrected, and they will be sent together also. After a note has been made against the entry they will be sent from the Centre to the Capitals of the Livas.

12. The sealed title-deeds returned from the Centre to the Capital of the Liva will be sent at once to the connected Kaza after having been noted in the tabulated register in accordance with the old rule, and on immediate gratuitous delivery by the land clerk of

Disposal of
surplus
revenue.

Registra-
tion and
sealing of
title-deeds.

Transmis-
sion of
title-deeds
to the
Kaza.

the Kaza to their owners, the counterfoil certificate previously issued will be taken and sent to the Capital of the Liva.

Status of
Arazi
Memours
and Kaza
Tapu
clerks.

13. The Arazi Memours and Kaza Tapu clerks will be considered as members of the Mejlis Idaré of the Liva and Kaza in which they are stationed when matters affecting land are being discussed. The Mazbata drawn up at the end of the proceedings after discussion will be sealed by them together with the other members.

Travelling
expenses.

14. When the Mudir of the Defter Khané Khakani or his assistant proceed to a place to make inquiries as before, they will be entitled to receive horse hire according to distance for three horses. The Sanjak Arazi Memours will be entitled to the hire of two horses for proceeding to places within the Sanjak. These sums will also be paid from half the cost of paper. The distance going and coming of the place visited each time will be calculated according to the Mazbata of the Mejlis. In accordance with the rule in force concerning all officials the Tapu officials must pay for all requirements and necessities in the places which they visit. Any infringement of this rule will be a cause of offence and responsibility (17).

Apportion-
ment of
cost of
paper.

15. A fixed portion for stationery will be assigned for each Central Tapu Office and Land Office in the Sanjaks; a fixed sum will also be assigned annually

for each Centre as cost of fuel and divers expenses; Office expenses. an office-keeper will also be appointed to the Central Tapu Office. These expenses will also be paid from the half of the cost of the paper. In short, from March, 1282, nothing will be issued from the Government treasuries as salary and other expenses of the Tapu officials. The degrees and actions of the officials are, for the present, described in these Instructions. Official notification will be sent from the Centre of the Vilayet of any modification made in consequence of the experience gained by practice.

XIX. LAW CONCERNING THE PROCEDURE OF VAKFS MUSAKAFAT AND MUSTEGHILLAT.

CHAPTER I.

CONCERNING THE DIFFERENT KINDS OF VAKFS AND RIGHTS OF POSSESSION.

1. Vakfs in the Ottoman Dominions are of two classes:—

- i. Mazbuta Vakfs
- ii. Non-Mazbuta Vakfs.

Definition
of Mazbuta
Vakfs.

Mazbuta Vakfs are Vakfs of which the appointment of trustees and management, or if the appointment of trustees is under the charge of the beneficiary, only the management is subject to, and all affairs are administered directly by, the Imperial Evkaf Treasury. Non-Mazbuta Vakfs are Vakfs which are administered by the Trustees (Mutevelis) under the supervision and with the knowledge of the Imperial Evkaf Treasury.

2. Musakafat are places on which there are buildings,

and which are prepared, and special, for the erection of buildings. Musteghillat are lands from which a profit is derived by means of possession, such as agriculture and planting of trees. Definitions.

Gedik (appurtenances) are equivalent to Musakafat.

3. The possessory procedure according to the different kinds of land belonging to Vakfs is subject to the provisions of Art. 4 of the Imperial Land Law. Procedure.

4. One class of Musakafat is alienated and taken in Ijaretein. The other class is possessed by the Vakf by way of Ijaré Vahidé. When Musakafat held in Ijaretein is handed over by the Vakf, a Muajele equal to its true value and a fixed annual Muejele will be paid to the Vakf. It can also be alienated and inherited (1). Ijare Vahidé Musakafat and Musteghillat are let by the Vakf for a fixed period, and cannot be alienated and inherited; this law does not apply to them. Musakafat held and alienable in Ijaretein.

Non-alienable and uninheritable property.

5. The Musakafat and Musteghillat of Mazbuta Vakfs held in Ijaretein are inherited by the children, grandchildren, parents, brothers and sisters, german, consanguineous, and uterine, husband and wife. The Musakafat and Musteghillat of Non-Mazbuta Vakfs held in Ijaretein is inherited by the children only. The rules with regard to the inheritance of Mazbuta Vakfs are fixed by a special law (2). Descent of Mazbuta Vakfs.

Disposal on
failure of
heirs.

6. If there are no persons having the right of inheritance to the Musakafat and Musteghillat of Mazbuta and Non-Mazbuta Vakfs as stated in Art. 5, they will be taken by the Vakfs (3) as Mahlul and leased by auction. The auction and lease of Mahluls will be carried out in accordance with the provisions of a special law (4).

CHAPTER II.

CONCERNING THE FORMATION OF THE ADMINISTRATION
OF TITLE-DEEDS AND THE MODE TO BE ADOPTED
IN KEEPING THE REGISTERS.

7. The Imperial Evkaf Title-Deeds Administration Title-deeds
Adminis-
tration. is divided into two branches, called the Musakafat and Gediks Offices, under one Mudir, who shall also have assistants.

8. There will be a sufficient number of inspectors, Staff. valuers, and assistant inspectors in the Musakafat and Gediks Offices, and engineers will be employed as required. The procedure necessary with regard to the duties of these officers, the number of clerks and supernumeraries employed, and their promotion, will be stated in special instructions.

9. The requisite number of Jabis and a Treasurer Jabis and
Treasurer. who has given security will be employed. One of the Jabis will be head of the others. The duties of these officers will be fixed by special instructions.

10. A separate register of the Musakafat and

Separate
register.

Musteghillat of each Mazbuta and Non-Mazbuta Vakf in Constantinople and the three cities will be kept by and under the supervision of the Title-Deeds Administration.

Classifica-
tion of
registers.

11. The registers of the Title-Deeds Administration will be divided into four classes :—

CLASS 1. Haremein Vakfs.

CLASS 2. Vakfs of the Sultans and their Dependents.

CLASS 3. Mazbuta Vakfs other than the above.

CLASS 4. Non-Mazbuta Vakfs.

Prepara-
tion of
registers.

12. All these registers will be prepared in one shape and size. The mode of preparation will be defined in special instructions.

Seal.

13. A seal bearing the sentence "Correct Entry" will be made and affixed under each registration.

Duties of
clerks.

14. All registrations will be made by the clerks of the Title-Deeds Office.

CHAPTER III.

CONCERNING THE SYSTEM OF ALIENATION AND INHERITANCE.

15. Musakafat and Musteghillat Vakfié held in Mode of alienation. Ijaretein can be alienated definitely or by mortgage (Vefaen Féragh). It also descends by inheritance, in accordance with the system stated in Art. 5. The way in which alienation, definite and by mortgage (Féragh bil Vefa), should be carried out is stated in this chapter: it is forbidden to execute it in any other way (5).

16. The conditions and procedure to enable Musa- Debt. kafat and Musteghillat Vakfie to satisfy debt during the lifetime or after the death of the debtor are defined in special laws (6).

17. The alienation, definite or by mortgage (Vefaen Purchases and mortgages. Féragh), and the inheritance of Musakafat and Musteghillat and Gediks of all Mazbuta and Non-Mazbuta Vakfs in Constantinople and the three cities must be carried out in the Title-Deeds Office. The depositions of the alienor and alienee or their agents and the Mutevelis of Non-Mazbuta Vakfs will be taken in their

Purchases
and mort-
gages.

presence by the Mudir of Title-Deeds or his assistants. By special permission in writing from the Evkaf Ministry the Mudirs of Title-Deeds and their assistants may take depositions outside their office. If the Mutevelis of Non-Mazbuta Vakfs or their agents are not present at the alienation, the depositions may be taken by the Title-Deeds Office, and subsequently communicated to the Mutevelis and their sanction obtained.

Exempted
Vakfs.

18. Only the alienation, inheritance, and issue of title-deeds for Musakafat and Musteghillat of exempted Non-Mazbuta Vakfs will be carried out at the Imperial Evkaf Treasury in accordance with the law. The advantages and receipts will belong to the beneficiaries.

Proof of
title by
descent.

19. When Musakafat and Musteghillat of Mazbuta and Non-Mazbuta Vakfs is inherited in accordance with Art. 5, the persons having the right to inheritance or their agents, and if the former are minors their relations or guardians, must prove their existence to the Mudir of Title-Deeds or his assistants and show the title-deeds in their possession.

Duties of
vendor and
mortgagor.

20. When a person wishes to alienate definitely or by mortgage (Vefae Féragh), Musakafat and Musteghillat Vakfie, the alienor must show his title-deed and have it compared with the Vakf register to prove the truth of his possession. If he has lost his title-

deed, in accordance with Art. 31, his deposition will be taken in order that a new title-deed may be issued, but only the formalities will be carried out: the preparation of the title-deed issued to losers is stopped.

21. After the truth of the possession of the alienor Valuation. has been proved, in case of necessity the value of the building, building site, or land to be alienated will be estimated by a valuer.

22. The following fees will be taken :—

50‰ on the value of Musakafat and Musteghillat Duties. and Gediks alienated, 25‰ on their inheritance by children, 10‰ on the amount of the debt on their mortgage (Vefaen Féragh), 10‰ on the amount of the debt on cancellation of mortgage (Féragh bil Vefa), 50‰ on the alienation and inheritance of land, 40‰ on the inheritance by grandchildren of Musakafat and Musteghillat belonging to Mazbuta Vakfs, 50‰ on the inheritance by parents, 60‰ on the inheritance by brothers and sisters, german, consanguineous, and uterine, and husband and wife.

23. The taking of more or less than these fees and Remission ,
of fees or
duties. their postponement is not allowed, but of the fees that will be paid by poor and necessitous persons, the Evkaf Ministry is permitted to forego at most 250 piastres of the shares which belong to the Evkaf Treasury.

24. Any expenses, such as horse and boat hire, and

Cost of
survey.

fare by steamers going and coming, incurred by valuers and engineers in inspecting Musakafat and other properties in places distant, or beyond the seas, will be calculated according to the distance of the place and time occupied, and deducted and paid from the fees payable on alienation, definite or by mortgage (Vefaen Féragh), and inheritance of Musakafat and Musteghillat.

CHAPTER IV.

CONCERNING THE MODE OF PREPARATION OF TITLE-DEEDS OF VAKFS.

25. The title-deeds of Vakfs are of two kinds: Title-deeds of Vakfs.
1. Are for Musakafat and Musteghillat of Mazbuta Vakfs; these, which are found at the Evkaf Ministry, will be sealed with its original seal. 2. Belong to Musakafat and Musteghillat of Non-Mazbuta Vakfs; these, after having been sealed by the Mutevelis, will be sealed with the seal of the Ministry and issued.

26. From the date of the promulgation and execution of this law, the title-deeds of Vakfs will be Form and contents of title-deeds. written on the official printed paper specially prepared. In all kinds of buildings and building sites alienated and received, the number, boundaries, form, value, area (ziras) if possible, names of the Vakf to which it belongs, alienor, alienee, and whether the alienation is definite, will be noted and explained in the form at the top of the title-deeds. These formalities will also be carried out in cases of inheritance. As soon as a definite alienation and inheritance is carried out these title-deeds will be renewed. For mortgage (Féragh

Method of
executing
mortgage. bil Vefa) a temporary title-deed will be issued to the mortgagee, a note will be made at the back of the original title-deed in the hands of the mortgagor that it has been mortgaged (Féragh bil Vefa), and a note will be made against the registration. On cancellation of mortgage (Féragh bil Vefa) a note will be made on the original title-deed, and the temporary title-deed in the hands of the mortgagee will be taken and annulled.

Temporary
certificate. 27. As stated in Art. 29, when alienation and inheritance take place, until the preparation and issue of the official title-deed in accordance with Art. 28, a temporary certificate will be issued to the alienee.

Receipt of
existing
title-deeds. 28. When the alienation and inheritance of Musakafat and Musteghillat is being carried out, the title-deeds in the hands of the alienor will be taken and kept, and a temporary counterfoil certificate, sealed by the Title-Deeds Administration, showing the date when the alienation was carried out, the Vakf of the thing alienated, and the number of the property, its kind, price, value, and the names of the alienor and alienee, will be issued to the alienee. And the nationality of the alienor and alienee will be shown at the top of the registration in the Vakf Register.

Certificate.

Compari-
son of title-
deed with
register. 29. The title-deed taken from the alienor will be compared with the registration in the Register of the Vakf to which the Musakafat and Musteghillat belongs.

The mode of alienation and inheritance, and date on which it was carried out, will be registered.

30. If a Musakafat and Musteghillat is composed of numerous Vakfs, separate title-deeds showing the area (ziras) and boundaries will be prepared, but a tabulated certificate showing the numbers, and a summary description of the place contained in each, will be issued to the owner, and in case of alienation and inheritance it is absolutely necessary that this certificate should be shown to the Title-Deeds Administration.

Separate
title-deeds
for each
Vakf.

31. If a Muteveli is missing or without reason neglects to seal a title-deed by a certificate from the Mehkeme Teftish (7) the Mudir of Title-Deeds will be appointed substitute, seal the said title-deed, and issue it to its owner. Nobody but the Mudir shall have power to seal a title-deed as substitute.

Sealing by
Mudir.

32. The title-deeds of owners who have lost their title-deeds and tabulated certificates will be renewed after the truth of the possession has been ascertained from the registers, and, in case of doubt arising from the registers, after the matter has been inquired into and judgment given by the Mehkeme Teftish.

Renewal of
lost title-
deeds.

CHAPTER V.

CONCERNING COLLECTING (JABI) AND CLERICAL SERVICES.

Collectors
and clerks.

33. The collecting work of Mazbuta Vakfs will be done by paid collectors, and the clerical work of Mazbuta and Non-Mazbuta Vakfs will be done by clerks employed in the Title-Deeds Office.

Salaries
and pen-
sions.

34. After the date of the promulgation of this law, possessors of collectorships and clerkships of Mazbuta Vakfs, and clerkships of Non-Mazbuta Vakfs who are honest and capable will be salaried and employed under the Title-Deeds Administration. The others will be retired with the balance of the fixed revenue belonging to them, at the rate of 30‰ on the definite alienation and 15‰ on the mortgage (Féragh bil Vefa) and inheritance of Musakafat, after $\frac{1}{5}$ has been detained for the Treasury.

Certain
offices not
descend-
ible.

35. The vacant posts of collector of Mazbuta Vakfs and clerk of Non-Mazbuta Vakfs will not be conferred on children by way of inheritance and on anybody else in any other way: they will be taken by the Treasury.

The collectorships of Non-Mazbuta Vakfs and clerkships held in mortmain (Meshrutiet) are exempt from this rule, the appointments will be carried out as before.

9. Jemazi ul akhir, 1287.

XX. AUCTION OF MAHLUL LAND.

REGULATIONS MODIFYING ART. 18 OF THE
TAPU LAW.

VEZIRIAL (1) ORDER CONCERNING THE FORMALITIES
OF PUTTING UP TO AUCTION MAHLUL LAND.

Redjeb, 1288.

Auction of
Mahlul
land.

It is known by Your Excellency that the 18th article of the Tapu Law is thus conceived: "The sale by auction of Mahlul land which, either from want of persons having right to Tapu or from the renunciation of this right by those who had a right, and which can be sold by auction, is made by the Kaza Mejlis when the extent of these lands does not exceed 100 donums; in case these lands have an area of 100 to 500 donums a new auction is made by the Liva Mejlis and its adjudication is made to the last and highest bidder; in case the extent of these lands exceeds 500 donums, after the above auction a report is addressed to the Ministry of Finance relative to it, in order that another auction of them be made by the Imperial

Treasury at the said Ministry :—the definitive adjudication must be made within three months at most ^{Change of regulations.} from the day of the arrival of the report in question at Constantinople.

But since the putting in force of the law about Vilayets it has been decided that the report shall be submitted by the Council of the Governor-General to the Ministry of Finance.

However, the system of submitting the affair of the Kaza to the Sanjak, from there to the Governor-General, and from the latter to Constantinople, as well as the granting these lands by means of correspondence, with many other formalities, and the delays which result from it cools the zeal of the buyers, who no longer offer on the spot the desired price, or entirely keep away from the auctions on account of the difficulties they meet with,—

Thus a great number of Mahlul lands are not sold at all, to the detriment of the Imperial Treasury. For this reason the Commission on reforms, with the intention of putting a stop to these difficulties and thus to augment the resources of the said Treasury and to facilitate the people in the acquisition of these lands in order to encourage agriculture, has decreed as follows : The final granting of Mahlul lands having an extent of 300 donums and saleable by auction must be made to the last bidder by the Kaza Mejlis ; in case the lands ^{New procedure.} have an extent of 300 to 500 donums the final delivery is to be made by the Liva Mejlis, but when these lands

New rules. have an extent exceeding 500 donums a new sale by auction is made by the Administrative Council of the Governor-General. The Secretaries as well as the employés charged with the delivery of the Tapus, are to be present in all these cases of public sale, the first in the Kaza and the second in the Sanjak and the relative Vilayet. In case of a sale by auction of lands having a greater extent than 500 donums, this sale will be made by the Council of the Vilayet. But as it is possible that there may be at Constantinople even a buyer, in order that he may be informed of it and be able to bid on the spot either in person or by his attorney, a notice, besides the one inserted in the paper of the Vilayet, will be sent, before the sale by auction by the Governor-General, to the printing office of the Ministry of Public Works. This notice, making known when the sale by auction commences and finishes and when the adjudication will take place, must be published also in the papers of Constantinople for the above ends.

In all these cases of public sale the sub-governors of Kazas, the governors of Sanjaks and the Valis of Vilayets will take care to have the above notices and insertions made in time, to perform the other formalities required by the law and the regulations, to prevent any fraud which might injure the interests of the Imperial Treasury.

The other competent authorities having had information of what precedes, Your Excellency will have the

goodness to conform to it in the Vilayet under your jurisdiction and do all you possibly can that the management of these lands will be taken care of conformably to the beneficent intentions of His Majesty the Sultan in favour of his people, and in order that the Imperial Treasury draw from it the expected profits, the zeal of the purchasers of these lands being on the increase.

XXI. LAW CONCERNING CONDITIONS FIXING THE SECURING OF DEBT AFTER DEATH BY ARAZI MIRIÉ AND MEVKUFÉ, AND MUSAKAFAT AND MUSTEGHILLAT VAKFIÉ.

—
21. Ramazan, 1288.

APPENDIX.

Sale of
certain
lands for
debt.

6. The Musakafat and Musteghillat Mevkufé possessed in Ijaretein, and the Arazi Mirié and Vakfié of persons who die owing money to the Government personally or as guarantee, and whose Emlak Metruké is not sufficient for the payment of their debt to the Government, will be sold and the debt paid from their value.

Exemption
of Mahlul
lands.

7. Mahluls are exempt from the authority of the last article, and the amount of the claim of the mortgagee in the value of the lands which have been mortgaged (Vefaen Féragh) to him cannot also be interfered with. And also if the heir who inherits Musakafat and

Musteghillat Mevkufé has no house, a habitation ^{Saving as} sufficient for him to live in shall not be sold, and if ^{to one} dwelling. the maintenance of the deceased debtor depended on agriculture, sufficient land for the maintenance of his house will not be taken from his heirs. The amount of the land that will be left to the heirs in this way will be fixed by the Court to which the case belongs.

XXII. LAW CONCERNING THE SALE OF IMMOVABLE PROPERTY FOR DEBT* (1).

Certain
lands
vendible
for debt.

1. Musakafat and Musteghillat Mevkufé possessed in Ijaretein and Arazi Mirié can be sold like movables for a judgment debt without the consent of the debtor, but one of the houses of the debtor appropriate to his state will not be sold for the debt: it will be left. If the debtor is an agriculturist, a sufficient quantity of his land for the management of his house will likewise not be sold, but left if it has not been mortgaged (Rehn) or put under a rule, like Vekialet Devrié. The amount of the land which will be left will be fixed by the Court which hears the action.

Saving as
to one
house or
certain
land.

Land, &c.,
not to be
sold if
enough
personal
property.

2. If the debtor proves that the nett revenue of his immovable property for three years is sufficient to pay the debt with the legal interest and expenses, and he

NOTE.*—*There is a letter from the Ministry of Justice, dated 29. Rejeb, 1302, relating to certain articles of this law being in force.*

ERRATUM.

Page 218, Article 1, line 2, *for* “movables,” *read* “pure freehold (Mulk) properties (Emlak Sirfé).”

concedes to the creditor its recovery, the sale of his immovable property will be abandoned.

3. A person who accepts the amount of the judgment debt by way of Havalé can claim the sale of the immovable property of the debtor like the original creditor after the matter has been communicated to the debtor. Right of assignee.

4. The immovable property of a debtor cannot be sold on a judgment against which an appeal lies, and in judgments given by default it cannot be sold without the time for objection having passed. Saving for debtor.

5. The creditor will prepare a notice asking for the payment of his debt, and stating that if it is not paid he will ask for the seizure and sale of the immovable property ; and, attaching a copy of the judgment, he will send it to the debtor, or to his residence through the executive authority. Notice by creditor to debtor.

6. The creditor shall not claim the sale of the immovable property without thirty-one days from the date on which he sent the notice having passed ; if ninety-one days from the date of the communication have passed, he will send a notice again ; on this it is necessary for another thirty-one days to pass. Debtor to have certain time.

7. After the provisions of Arts. 5 and 6 have been carried out, a special official from the executive

Execution. authority will be sent to the immovable property, and cause it to be seized. A summary and the date of the judgment, the nature of the duties and departure of the official sent, the nature and boundaries of the immovable property, that is to say, if the immovable property seized is khan, house, shop, and such like property, the town, Kaza, quarter, name of the street, number of the door, and the nature of the property in the vicinity of which they are ; and if it is land, the Kaza, village, name of the quarter in which it is situate, the approximate number of donums, and if there are any buildings and trees on it, their number and kind ; the name of the Court which gave the judgment, and the name, surname, and residence of the plaintiff, will be stated in the seizure document, which will be prepared for this in duplicate.

Notice of
execution.

8. The matter will be published by hand sheets and in the newspapers twenty-one days before the day of auction ; a notice will also be stuck in the places where people pass and collect in the town where the auction will be held.

Sale by
auction.

9. The auction will close in sixty-one days, and on whom the last bid remains a temporary decision (karar dade) will be drawn up on the auction bill by the executive authority. In the event of an increase of at least five per cent. within thirty-one days from the date of the decision it will be put up to auction again, and

the increased bid with the expenses belonging to it will be taken from the last bidder, and the title-deeds of possession will be given by the office to which the immovable property is subject. Conveyance.

10. If the person to whom the immovable property put up to auction has been knocked down retracts from his purchase the auction will be carried out again, and he will be made to indemnify the damages and expenses of action. Liability of bidder who withdraws.

11. The officials who carry out the auction and the officials and members of the Court which gives judgment for the sale of the immovable property shall not run up the bids, if they do so they will be held legally responsible. Puffing forbidden.

• 12. If a person does wrong to the auction he will be punished in accordance with Art. 218 of the Imperial Penal Code. Punishment of offender.

13. If a person begin an action as to ownership of immovable property put up to auction, it is necessary that he should take action before the last decision has been given; and if he does not prove his claim he will pay compensation for all loss arising from the delay of the auction, and other causes; but he does not lose the right to take action afterwards, if he proves that for a valid reason he has not been able to take action before the last decision. Time for claim of ownership.

Rights of
creditor.

14. If the creditor does not wish the immovable property of the debtor to be sold at the time specified, another creditor shall have the right to have it sold in accordance with the provisions of this law.

Option of
debtor as
to things
sold.

15. If a portion of the immovable property is sufficient to pay the debt, the things which the debtor wishes shall be sold in his presence, and if he is absent things of which the sale will be advantageous to the debtor shall be sold.

APPENDIX.

Saving as
to old
debts.

Debts which have been contracted before the date of publication of this law, even if the deeds have been subsequently renewed, will be subject to the old laws which were in force at the time of the debt; the procedure that will be taken concerning immovables on their account will be in accordance with the said former laws.

Date of Imperial Iradé—

15. Sheval, 1288.

15. December, 1287.

Provisions
as to title-
deeds.

With reference to the manner of preparing the documents required to be issued to purchasers of immovable property belonging to debtors refusing to sell, and to be sold under the "Law on the sale of

immovable property for debts," His Majesty the Sultan has been graciously pleased to sanction by his Imperial Iradé, granted on request made by decision of the Council of State, that henceforth when, under a judgment of the Court, the executive authorities proceed, according to the rule (in that behalf) to the sale of any "Mulk" found in the possession of a debtor after the precautionary conditions contained in clauses 7, 8, 9, of the said law have been fulfilled, and after the purchaser has been settled on, a Mazbata of sale shall be drawn up by the Court to serve as original and to be kept in the Court, and the necessary "Shèri" title-deeds and documents, as also the legal instruments showing possession, shall be prepared in accordance with it (Mazbata) and given to the purchasers.

Preparation of title-deeds.

It is decreed (by that Iradé) that the issuing of instructions to this effect to all the Courts found in the Capital should be entrusted to your Excellency, and that the provincial authorities should also be directed to conform their acts and proceedings to this decision. A letter to that effect has been written to the necessary civil authorities, and notice has been given by a Vezirial letter, dated 25. Zil Kade, 1288 (24. January 1287), that the necessary steps in the matter will be taken, conformably with the high purport of His Majesty's said Imperial Iradé, by the High Court of Justice also.

Law to be enforced.

XXIII. LAW CONCERNING MAHLUL VAKF HOUSES.

Sale of
Mahlul
houses by
auction.

1. Entirely Mahlul houses will be put up to public auction according to the established system (1). They will not be considered as adjudicated, and the leasing will not be carried out, unless notices stating the time fixed for the auction have been published in the press and by special hand sheets, and until the period fixed for the auction has elapsed, and all other bidders have withdrawn.

Purchase
of share in
house by
co-proprie-
tor.

2. If a co-proprietor wishes to take the Mahlul (2) share of a participated house the modified procedure special to co-proprietors will be put in force and the following deductions in the estimated value of the Mahlul share will be made in his favour :—

20%	if the Mahlul share is $\frac{1}{2}$ or more of the house.		
30%	„ „ „	from $\frac{1}{2}$ to $\frac{1}{6}$	„ „
50%	„ „ „	less than $\frac{1}{6}$	„ „

3. If a participated house belongs to many co-proprietors, only one of whom wishes to take the Mahlul share and the others withdraw, the modified procedure,

of which the degrees are fixed in Art. 2, will be put in force in favour of that co-proprietor. If all the co-proprietors take the Mahlul share, the modified procedure will be put in force in favour of them all. If all the co-proprietors wish to take the Mahlul share and cannot agree among themselves, without calling for bidders from outside, it will be put up to auction among the co-proprietors and conferred on the highest bidder for the Muajel fixed. If none of the co-proprietors wish to take the Mahlul share it will be put up to auction in accordance with Art. 1, among bidders from outside and conferred without deduction.

Purchase of entirety by one co-proprietor.

4. If the co-proprietors do not take the Mahlul share for themselves but point out and agree to its being let to one of their dependents, the modified procedure stated in Art. 2, to be carried out concerning co-proprietors will be carried out concerning their dependents also.

Lease or Mahlul share to dependant.

5. If the co-proprietors do not wish to take the Mahlul share, and refuse to sell with it their shares the value of which will be paid to them, if the house can be divided the Mahlul share will be separated and put up to auction by the Treasury (Imperial Evkaf), and leased to whomsoever it is adjudicated. If the house cannot be divided, the system of possession by turns (3) will be put in force.

Sale of share in a house.

6. If the co-proprietors of participated houses are

Sale of
shares in
participa-
ted house.

not to be found in Constantinople but are to be found in the provinces, the value of the Mahlul share and the amount of the modified procedure special to co-proprietors will be notified by the Treasury (Imperial Evkaf) to the local government of the place where the co-proprietors are to be found, and the local government will inform the co-proprietors. If they accept it the price will be collected within three months at most from the date of communication to the co-proprietors and sent to the Treasury (Imperial Evkaf) and the lease will be carried out. If they withdraw, as shown in Art. 5, if the house can be divided the Mahlul share will be separated and put up to action. If the house cannot be divided the system of possession by turns will be put in force.

Sale by
auction
when value
is thought
excessive.

7. If any co-proprietor of a participated house complains that the value of the Mahlul share estimated by the Treasury (Imperial Evkaf) is excessive, it will be put up to auction and offered to the co-proprietor for the Muajel attained, whether it be more or less than the estimated value. If he abstains from taking it, as stated in the preceding article, if the house can be divided the Mahlul share will be separated and put up to auction. If the house cannot be divided the system of possession by turns will be put in force.

8. If a husband alienates to his wife a share of the house belonging to him, and subsequently, on

account of the death of his wife, is obliged to retake the same share from Mahlul, a deduction of half the estimated value of the said share will be allowed. Share as between husband and wife. The same course will be followed if the Mahlul share was alienated by wife to husband. But it will not be allowed in the event of the death of a husband or wife who has alienated to his wife or her husband the half of a house while being possessor of the whole. In such a case the procedure belonging to co-proprietors, in accordance with the rule stated in Art. 2, will be carried out.

CONCLUSION.

This Law will be modified by Imperial authority in order to facilitate any difficulties that may arise in future in carrying out the lease of the said Mahluls.

Date of Imperial Decree—

19. Zilhijé, 1288.

16. February, 1287.

XXIV. INHERITANCE OF MIRIÉ AND MEVKUFÉ LAND POSSESSED BY TAPU.

APPENDIX PUBLISHED ON THE 29. REBI UL
AKHIR, 1289.

Succession
as between
husband
and wife.

As in the case of a person divorcing his wife with power to re-marry her, and before the time allowed to see whether she is pregnant or not is finished, one of the parties dies, or of a man being betrothed to a woman, and before the consummation of marriage one of the parties dies, either of them who proves their inheritance according to the Sheri having a right of succession in the land left, if a man who is suffering from a fatal disease dies after having divorced his wife with a definitive divorce, and before the time allowed to see whether she is pregnant or not is finished, her inheritance being established in accordance with the Sheri, she has a right of succession in his land.

Effect of
divorce.

NOTE.—*In accordance with the Imperial Iradé communicated by Vezirial letter, if by the Sheri the wife cannot be an heir, she cannot have the right of inheritance.*

XXV. CONCERNING TITLE-DEEDS
ISSUED BY THE DEFTER KHAKANI
FOR SIMPLE "EMLAK."

Law concerning the delivery of titles in a regular manner for simple "Emlak" in the towns, villages, and Nahiés of the Imperial Dominions, that is to say, for the site, and buildings and trees thereon, which are Mulk, houses, shops, vineyards, gardens, and other property, and for the "Emlak" on Mukata Arazi Mevkufé and Arazi Mirié paying equivalent of tithes, that is to say, to the owners of the buildings, vineyards, and trees.

PREFACE.

1. New printed title-deeds with the Imperial Cypher at the top will be given for all "Emlak" in the towns, villages, and Nahiés, and henceforward the possession of "Emlak" without title-deed is prohibited.

2. The new title-deeds are of two kinds, the one for simple "Emlak" and the other is special for places

where the ground is Mukata and the buildings or trees thereon Mulk.

Staff for
Emlak
business.

3. The execution of the Emlak procedure is referred to the Defter Khakani officials. In every Sanjak there will be a special clerk under the Defter Khakani official for Emlak work, and in every Kaza in company with the Tapu clerk there will be a clerk as his representative with the title of Emlak Clerk, there will also be the assistants in accordance with their requirements.

Office.

4. There will be a special room in the Defter Khané as the Centre for the Emlak registration proceedings.

CHAPTER I.

CONCERNING THE MODE OF ISSUE OF NEW TITLE-DEEDS
FOR "EMLAK."

5. Commencing at the Centre the Emlak Clerk of every Kaza will go round all the towns, and subsequently the villages and Nahiés in his Kaza, and carry out the inspection (Yoklama) of the existing "Emlak." He will take as the basis of his inspection the register of the places of which the registration has been already carried out. Thus the Emlak Clerk, together with a member of the Liva or Kaza Mejlis Idaré who has knowledge in such matters and the Tahrir Memour, in the presence of the Imam, Mukhtar and Council of Elders of the quarter in which the "Emlak" is, will register the "Emlak" and prepare the Yoklama Registers in accordance with the specimen, and he will examine the Hujets and other title-deeds that will be shown by the owners of "Emlak." The mode of possession of those who have no Hujet or title-deed being also a reason for "Mulk," he will inquire whether it is based on the support of the law and make a note in the column for remarks. A mark with a stamp will be made on the Hujets, &c., in the hands of owners of "Emlak" showing that the Yoklama has been carried out, and new title-deeds given.

Mode of
issue of
new title-
deeds.

Registra-
tion of
Emlak.

Yoklama. It is decided that without the Yoklama of "Emlak" in the towns being carried out and completed, the Yoklama of villages and Nahiés will not be commenced.

Making of Yoklama Register. 6. On the Yoklama Register being prepared as above, and after having been certified with the seal of the Yoklama Commission, it will be given to the Mejlis Idaré, and it will be there read in the presence of the Naib of the town. If the Mejlis consider it necessary that further inquiries concerning the mode of possession of a "Mulk" should be carried out, all the necessary inquiries will again be carried out in the presence of the Naib, and the Yoklama Register will be sealed and certified by the Mejlis Idaré.

But it will not be permitted for a register to be kept for more than one month in the Mejlis Idaré. In case there appears in it certain doubtful "Emlak" and the inquiries require more than one month, these will at once be separated in order that the inquiries may be carried out, and the Yoklama Register will be sealed and certified by the Mejlis Idaré during one month at most.

Temporary certificates. 7. Temporary certificates will be prepared in accordance with the Yoklama Register which has been certified in the manner stated, and after having been sealed at the Head-Quarters of the Liva by the Naib, Muhasebeji, Defter Khakani official, and Treasurer, and at the Head-Quarters of a Kaza by the Kamaikan,

Naib, Tapu Clerk and Treasurer, they will be delivered to their owners.

8. The Yoklama Register of every Kaza will be prepared separately for simple "Emlak" and for "Emlak" which is Mukata, and a copy of each, together with the revenue, will be sent with a Mazbata to the Head-Quarters of the Liva, and from there the revenue together with the summary that will be prepared in accordance with the specimen will be sent to the Defter Khané. The original copies will be kept in their respective localities.

Separate
Yoklama
Registers
for Emlak
and
Mukata
Emlak.

9. The title-deeds with the Imperial Cypher prepared in accordance with the registers received, will be sent from the Defter Khané to the Defter Khakani officials, who will cause them to be delivered to their owners on restitution of the temporary certificates.

Forward-
ing of
deeds.

10. Besides three piastres cost of paper, and one piastre clerk's fee, for every new title-deed there will be taken once the following Yoklama fees:—

Yoklama
fees.

On "Emlak" valued from 5,000 to 10,000 piastres, 5 piastres; for every 10,000 in excess 5 piastres.

On "Emlak" valued at 100,000 piastres, 50 piastres.

On "Emlak" valued at over 100,000 piastres, 100 piastres.

Nothing more than the cost of paper and clerk's fee will be taken on "Emlak" of a less value than 5,000 piastres.

CHAPTER II.

CONCERNING THE PROCEDURE TO BE FOLLOWED IN
CASES OF SALE, PURCHASE, MORTGAGE (TERHIN),
INHERITANCE, GIFT, AND BEQUEATHAL OF "EMLAK."

Mode of
selling
Emlak.

11. In sales of "Emlak," the seller will in the first place get a certificate from the Imam and Mukhtar of his quarter, stating that he is alive and the proprietor of the "Emlak," and if there is a Tahrir Memour after having got a Kochan (Sergi) from him also, he will apply to the Mejlis Idaré of the place in which the "Mulk" is, and a deposition that the "Mulk" has been sold by a lawful true irrevocable sale will be made by the seller and buyer, personally or by their lawful agents, at the said Mejlis, in the presence of the Naib and Defter Khakani or Tapu Clerk, and on acceptance by both parties the matter will be registered in a special register, and certified, and sealed by the Mejlis.

Registra-
tion.

If the payment of the whole or part of the sale price is postponed, the Mejlis will cause it to be bound by a deed, and this kind of promissory note (Dein Sened) will also be sealed and certified by the Mejlis.

12. Sale fees at the rate of ten piastres per mille

according to the price of sale, three piastres' cost of paper, and one piastre clerk's fee will be taken from the buyer and paid into the Treasury. A printed temporary certificate will be prepared according to specimen showing the circumstance of the sale, and sealed in accordance with Art. 7 and given to the purchaser. If there is a new title-deed for the "Mulk" sold, nothing will be taken for the temporary certificate except the cost of paper and clerk's fee. If there is none, the special fees in accordance with Art. 10 will also be taken from the seller.

Temporary
certificate.

Special
fees.

13. When the owner of "Emlak" dies the procedure will be carried out by the local Mejlis Idaré on the Tahrir Kochan (Sergi) that will be taken in accordance with the inheritance register (Defter Kasam) if it has been made, and if there is no inheritance register in accordance with the division statement, signed and sealed by the Sheri authorities, on the certificate of the Imam and Mukhtar of the quarter, showing how many heirs there are, and after having been registered, sealed and certified in the special register kept in accordance with Art. 11, 5 per thousand inheritance fees, 3 piastres cost of paper and 1 piastre clerk's fee will be taken and paid to the Treasury, and the temporary certificates will be delivered to the heirs.

Procedure
upon
succession
to Emlak.

14. Sale and inheritance fees will be calculated and taken on the total value of simple "Emlak," and only

Valuation.

on the value of the trees or buildings which are Mulk of those which are Mukata.

Sale of
Emlak by
auction.

15. The "Emlak" of those who die without heirs or testament will be sold by auction to the candidate, like Mahlul Arazi Mirié, and the price entered in the Receipts Register, and sent to the Defter Khané.

Mode of
effecting
mortgage.

16. In mortgage (Terhin) proceedings the certificate of the quarter in which the "Mulk" about to be mortgaged (Rehn) is situate, the Tahrir Kochan (Sergi), the promissory note (Dein Sened) written on stamped paper, and the title-deed of the property about to be mortgaged (Rehn) will be taken to the local Defter Khakani official or Tapu clerk, who will carry out the following procedure. A printed counterfoil paper special to mortgage (Terhin) will be filled up in the presence of the mortgagor (Rahin) and mortgagee (Murtehin) or their lawful agents, sealed by the Defter Khakani official or Tapu clerk and Treasurer, and on being separated from the foil it will be delivered to the creditor with the title-deed and promissory note: 3 piastres' cost of paper, 1 piastre clerk's fee, and a mortgage (Rehn) fee at the rate of 1 piastre per mille on the amount of the debt will be taken. On cancellation the same fees will be taken, and the promissory note and title-deed returned to the owner. The mortgage (Rehn) and cancellation fees will be paid into the Treasury and sent to the Capital of the Liva

with the receipts registers that will be prepared every month, and there they will be entered in the summary register and sent to the Defter Khané. The procedure for mortgage (Bei bil vefa) and mortgage (Bei bil Istiglal) will be carried out in the explained way also. Mortgage of Mulk.

17. Without a Sheri Ilam for "Emlak" given or bequeathed the legal procedure will not be carried out. Sheri Ilam essential.

18. The title-deeds given for "Emlak" in accordance with the above, being official title-deeds, they will be respected and acted upon in all courts and councils. Effect of title-deeds.

19. Actions for mortgage (Rehn), conditions, mortgage (Vefa), and mortgage (Istiglal), which are not stated in the deed, will not be heard. Thus, if the seller definitely sells a "Mulk," and has given to the purchaser a deed of sale in accordance with the custom, says that he gave it in mortgage (Rehn), or by way of mortgage (Vefa), or (Istiglal), or on certain conditions, and takes action, it will not be heard. Action must have good grounds.

CONCLUSION.

20. The clerk's fee belongs to the district Tapu fees. clerks; 18 % will be deducted from the Yoklama fees, of which 10 % belongs to the Emlak clerks, 4 % to the collectors, and 4 % to the Defter Khakani officials;

6 % will be deducted from the permanent receipts, of which 2 % belongs to the Defter Khakani official, and 4 % to the Emlak clerk.

Division of
cost of
writing.

21. Of the 40 piastres cost of writing that will be paid (to the Yoklama clerk) for filling each book of 200 temporary certificates 27 will be paid from the fees of the Emlak clerk and 13 from those of the Defter Khakani official, and the details of the work will be carried out according to the Tapu system.

Inspection
and regis-
tration of
Emlak.

22. Matters regarding the inspection and permanent procedure of "Emlak," and the preparation and sending of registers and summaries, will be carried out in accordance with the provisions of the Arazi Mirié Regulations and Instructions which are not contrary to this law.

28. Rejeb, 1291.

28. August, 1290.

XXVI. APPENDIX TO ART. 41 OF THE IMPERIAL LAND LAW.

And if during this five years the partner dies, his heirs having the right to inheritance have the right and the power to take the land in the explained method from the alienee. If the alienee dies, the partner has the right and the power to take the land in the explained method from the heirs having the right to inheritance of the alienee; and if the partner and the alienee die at the same time, the heirs having the right to inheritance of the partner have the right and the power to take the land in the explained method from the heirs having the right to inheritance of the alienee.

Right of
heirs upon
death of
partner
within five
years.

See p. 22.

19. Shaban, 1291.
18. September, 1291.

XXVII. APPENDIX TO ART. 108 OF
THE LAND LAW.

Forfeiture
of murder-
er's pro-
perty.

The land of a murdered person is not transmitted by inheritance to the accomplices of the murderer, and likewise the accomplice of the murderer cannot have a right to Tapu in the land of the murdered person.

28. Rebi ul Akhir, 1292.

22. May, 1291.

XXVIII. APPENDIX TO ART. 6 OF THE TAPU LAW.

With the exception of Arazi and Evkaf officials, ^{Reward to} whoever gives proved information that the price of ^{informer} sale of Arazi Mirié and Mevkufé and Musakafat ^{as to con-} Mevkufé and simple "Emlak" alienated and sold has ^{cealed} been understated, double the alienation fees on the ^{value.} amount understated shall be taken from the seller and purchaser in two equal shares, and one-half paid into the Treasury and the other half given to the informer.

24. Jemazi ul Akhir, 1292.

14. July, 1291.

XXIX. ARTICLE TO TAKE THE PLACE OF ART. 20 OF THE TAPU LAW.

Reward to
informer
as to con-
cealed
value.

With the exception of Arazi and Evkaf officials, whoever gives information of concealed Arazi Mirié and Mevkufé and Musakafat Mevkufé and simple “Emlak,” the Mahlulship of which has not been heard direct by the Government, shall be given a reward of 10 % from its Bedel Muajel after it has been conferred by auction by the Mejlis on the candidate.

24. Jemazi ul Akhir, 1292.

14. July, 1291.

XXX. LAW CONCERNING MUSAKAFAT AND MUSTEGHILLAT MEVKUFÉ HELD IN IJARETEIN.

1. All Musakafat and Musteghillat Mevkufé which is held in Ijaretein will be inherited :—

Rules of inheritance of Musakafat and Musteghillat Mevkufé held in Ijaretein.

i. As before, by the male and female children equally, or, if there is only one male or female child, by that one only.

ii. If there are no children, by the grandchildren, that is to say, by the children of the male and female children likewise equally, or if there is only one, by that one only.

iii. By the parents.

iv. By the brothers and sisters german.

v. By the brothers and sisters consanguineous.

vi. By the brothers and sisters uterine.

vii. By the husband or wife. The share belonging to both, as above, will be inherited by one if only one of the parents is alive. This rule is also applicable to brothers and sisters.

2. When an heir of the first degree of the seven

degrees of possessors of the right to inheritance mentioned above is alive, an heir of the second degree cannot have the right to inheritance. For instance, when there are children, the grandchildren, and when there are grandchildren the parents have no right to inheritance. But the children of the male and female children who die during the lifetime of their father and mother take the place of the children and inherit from their grandfather and grandmother the share that would be inherited by their father and mother. Thus, the person who dies during the lifetime of his father and mother being considered alive, the share that he would inherit from his father and mother will be inherited in equal shares by his male and female children, or the whole by one, if there is only one child. The husband and wife will each inherit a fourth share of the Musakafat and Musteghillat that would be inherited by the heirs who are possessors of the right to inheritance of the four degrees from the parents to the brother and sister uterine. If there are no heirs of the sixth degree, brothers and sisters uterine, the whole of the Musakafat and Musteghillat will be inherited by the husband or wife. If there is no husband or wife it becomes Mahlul.

Preference
of heir of
first
degree.

But chil-
dren take
deceased
parent's
share.

Husband or
wife takes
a fourth.

Mortgage. 3. The system of mortgage (*Féragh bil vefa*) which is in force for securing debt will be in force as before, and the conditions and procedure detailing this system will be fixed by special laws.

4. In compensation for the loss of *Mahluls* of *Vakfs* in consequence of the extension of inheritance as above, an annual rent (*Ijaré Muejele*) of one per 1000 will be fixed on the registered values of *Musakafat* and *Musteghillat* which are registered in the new registers, and the ancient rents of these will be abolished. The place of each *Vakf* in *Musakafat* and *Musteghillat*, which are mixed with numerous *Vakfs*, will be surveyed and delimited, and a separate rent for each *Vakf* will be fixed on whatever falls to the share of each *Vakf* on the registered value in the registers according to its present form. If a *Musakafat* and *Musteghillat* *Mevkufé* is mixed with a fixed rent (*Mukata*) *Vakf* or pure *Mulk*, a rent of one per 1000 will be fixed only in proportion to the amount of the share which belongs to the *Ijaretein* portion of the value which is assessed on the whole in the register.

Increase of yearly rent (*Ijaré Muejele*) upon extension of inheritance.

Separate rent for each *Vakf*.

5. The following fees will be taken on the inheritance of *Musakafat* and *Musteghillat* *Mevkufé* in the explained way :—

Succession duties.

15 % as before when inherited by the children.

30 % when inherited by the grandchildren.

40 % when inherited by the parents.

50 % when inherited by the brothers and sisters, german, consanguineous, and uterine, and the husband and wife. A fee of 30 % as before will be taken on a definite alienation, and in cases of mortgage (*Féragh bil vefa*), mortgage (*Istiglal*), cancellation, and release a fee of 5 % will be taken.

Clerk and
Jabi to
take a
fourth of
the fees or
duties.

6. One-fourth of the fees that will be taken on the inheritance by children of Musakafat and Musteghillat Mevkufé as above will belong to the Clerk and Jabi of the Vakfs as before; but all the fees that will be taken on the inheritance by heirs other than children will be paid to the Treasury and entered as revenue of the Vakfs.

Same rent
to be paid
for Gediks
held in
Ijaretein.

7. The provisions stated above will also be carried out in Gediks which are possessed in Ijaretein. Thus separate rents of one per 1000 will be fixed according to the values registered in the register on the Gedik as well as on the place called Mulk, on which they are established.

Valuation
of sites of
destroyed
buildings.

8. It will be sufficient to collect the amount of the rent on the value that will be reassessed on the sites only of Musakafat and Musteghillat, which has been burnt or destroyed after the rent (Ijaré Muejele) has been fixed in accordance with the foregoing rules, the amount which falls to the share of the burnt or destroyed building will be deducted.

Valuation
of sites of
new or
restored
buildings.

9. If, after the rent has been fixed in accordance with the new rules, buildings are built on sites on which the buildings have been burnt or destroyed, and on sites on which there were no buildings originally, they will be reassessed in their present form, and a rent of one per 1000 will be fixed on the value estimated by persons of knowledge.

10. After the rent of Musakafat and Musteghillat as above has been fixed in accordance with the new rule during a period of five years, no increase or decrease in the amount of the rent assigned will be made on account of the advance or decline of the value of the property, but once every five years the value of the said Musakafat and Musteghillat will be inquired into, and the rent will be renewed or modified.

Valuation
to be made
every five
years.

11. Henceforth no marginal notes will be written on the title-deeds given in accordance with the new system. In cases of alienation, inheritance, separation, and division, new title-deeds will be prepared and issued; "Cancelled" will be written on the old title-deeds, which will be retained by their owners.

Issue of
new title-
deeds.

12. Musakafat and Musteghillat, of which the site is a fixed rent (Mukata) Vakf, and the buildings and trees Mulk, will be dealt with according to ancient custom. When Musakafat and Musteghillat of this kind is sold and bought, alienated and inherited, the old fixed rent (Mukata) will be augmented to a suitable degree.

Musakafat
and Muste-
ghillat for
which
there is a
fixed rent.

13. This law takes the place of the law published by Imperial Decree on the 17. Muharem, 1284, concerning Musakafat and Musteghillat Mevkufé which is held in Ijaretein, and the law published on the 2. Zilkadé, 1285, as an appendix concerning the mode of execution of the provisions of the said law. It comes into force from

Operation
of law.

the date of promulgation, but the old rents will be abolished from the end of last February, 1290, financial year, and the new rents, fixed at the rate of one per 1000, will be collected from March this year, 1291.

4. Rejeb, 1292.

XXXI. INSTRUCTIONS CONCERNING
THE MODE OF CARRYING OUT THE
DECISION ADOPTED BY IMPERIAL
DECREE CONCERNING THE ISSUE
OF TITLE-DEEDS BY THE DEFTER
KHANÉ FOR ARAZI MEVKUFÉ.

1. As before, title-deeds will be given by the Muhasebejis of Evkaf for Musakafat of which the ground and building is Vakf, and for the buildings only of Vakf Chiftliks which are possessed by Ijaretein, and by the Mutevellis for Musakafat and Musteghillat which are attached to exempted Vakfs, in towns and villages. Except these, that is to say, for places to which a fixed ground rent (Mukata Zemin) is attached, Vakf land which is titheable or pays a fixed equivalent to tithe, trees and vines of gardens and vineyards which are Vakf, within or without towns, title-deeds will be given by the Defter Khané Khakani, and the sale and depositions, auction and other procedure according to the law of Mahluls, will be heard and carried out in the Livas by the Defter Khakani officials, and in the Kazas by the

Issue of
new title-
deeds.

Tapu clerks, in the manner which is *ab antiquo* in force for Mirié and Evkaf land.

Making of
Yoklama
and Yokla-
ma Regis-
ter.

2. The Defter Khakani officials, in their own Livas, will get from the Muhasebejis of Evkaf a register of the number of villages of which the Yoklama system has been formerly carried out through the Muhasebejis of Evkaf, and of the villages of which the Yoklama has not yet been made, and in accordance with this register they will proceed according to established law to carry out, through the Kaza Tapu clerks, or if these are not sufficient, through the clerks they will appoint from outside, the Yoklama of the villages of which the Yoklama has not been made, and they will show in the Yoklama register the Vakf and administration to which the places that are registered during the Yoklama belong, and of what kind of things the benefice is composed. These explanations will be carried out in accordance with the register which they receive as a specimen at the time when the handing over from the Muhasebejis of Evkaf takes place.

Possession
without
title-deeds
unlawful.

3. In accordance with Art. 1 of the Instructions contained in the Destur concerning Tabulated Certificates, the possession of Arazi Mevkufé without title-deed is *ab antiquo* illicit, and as from the date (25. Ramazan, 1281, 9. February, 1289) of the formation of the provincial title-deeds at the Imperial Evkaf Treasury the possession by title-deeds other than those issued from

that date up to now by the said Ministry bearing the Imperial Cypher at top, issued by Mutevellis and Agents before the said date, bearing known seals, and written on paper without the Imperial Cypher as not to be registered at Constantinople will not be permitted, the title-deeds of those who possess this kind of title-deed will be changed on taking only four piastres each, cost of paper and clerk's fee, and new Vakf title-deeds with the Imperial Cypher at top will be issued. If a title-deed without the Imperial Cypher issued after the said date appears, and the seal or signature of this title-deed is known on taking the clerk's fee and cost of paper, it will be changed for a title-deed bearing the Imperial Cypher, and as this kind of title-deed is contrary to law and issued with the intention of embezzling the alienation or inheritance fees paid, it will be necessary to claim a fee of 5 % according to law from the person who issued the title-deed at the time. If the title-deeds without the Imperial Cypher issued after the said date are unknown, the Evkaf Mudirs will inquire into the prescriptive right (Hak Karar) of the owners as explained in the law; if it is established the procedure according to law will be carried out, and on a fee of 5 % on the estimated value, with clerk's fee and cost of paper being taken, the title-deed with Imperial Cypher will be issued; if it is not established it will be treated as concealed land. For the purpose of carrying out this procedure it is necessary for a Mazbata to be made by

Possession without title-deeds unlawful.

Issue of new form of title-deed.

Prescriptive rights to be proved.

Loss of
title-deeds.

the Mejlis. A new title-deed will be issued to persons who have lost their title-deed with the Imperial Cypher on the registers being examined, and the clerk's fee and cost of paper being taken.

Duty upon
alienation
or devolu-
of Arazi
Mevkufé.

4. On the alienation and inheritance of Arazi Mevkufé a fee of 5 % will be taken, and if it is mixed with "Emlak" the procedure according to its special law will be carried out for the "Emlak." Though the mortgage (Istiglal) of Arazi Mevkufé will be carried out exactly according to the law which is in force for Arazi Mirié, when these are mortgaged (Istiglal) or cancelled in accordance with the Evkaf law a fee of $2\frac{1}{2}$ % will be taken. As shown in the specimens of the Emlak summaries, the amount of fees for mortgage (Istiglal) and cancellation that are taken during a month will be shown separately in the balance column of the Kaza receipts register for that month, and when they are transferred to the Liva summary register, they will be shown in the line for that Kaza and in the remarks column.

Yoklama ;
permanent
procedure ;
receipts
registers ;
summa-
ries.

5. The Yoklama and permanent procedure, and the receipts registers and summaries of Arazi Mevkufé will be carried out in accordance with the specimen sent. There will be inserted in Nos. 1 and 2 of the specimens, under the serial number, in the open line of the administration column, the administration to which the Vakf to which the place belongs is attached ; in the line of the Vakf column under it, the Vakf in which it

is situate; and still under that, in the column for benefices, if it is possible, the kind of benefices to which that land is Vakf, in accordance with the register received from the Muhasebeji of Evkaf at the time of handing over.

Filling-up
of speci-
mens.

6. The nature of the receipts inserted in the registers will be shown separately at the bottom of the receipts register, as shown in the specimen. The number of piastres to which the total receipts of each Vakf amount will be written in the total column, and in the line the name of the Vakf will also be entered.

Nature and
amount of
receipts.

7. Administration, Vakf, and Benefice columns having been opened in the temporary certificates that will be filled up in order to be given to possessors of land, the Administration and Vakf to which the land is attached, and the nature of the benefice, will be explained in these, and if the place for which the title-deed will be given pays equivalent to tithe, or a fixed fee, the amount of the equivalent of tithes and fixed annual fee that may have accumulated for how many soever years will be collected and entered in the special column, as shown in the specimen.

Entries in
specimen
certificates.

8. The Kaza Summary Registers will also be prepared in accordance with the system adopted for Arazi Mirié, but, as shown in the Kaza Summary Specimen No. 3, in the column opened for names of

Kaza Sum-
mary Reg-
isters.

Name of Vakf.	Vakfs, the name of the Vakf will be written, and the receipts and deductions will be written in the line of the special column. As the Yoklama of each town or
Making of Yoklama.	village is completed, the towns and villages will be separated from each other on the left of the Vakf names, and drawing a parenthetical line for each, the name of the town or village will be written on the top. The next village being commenced, and continuing to write them in turn, a total will be made.
Liva summaries.	9. Though the surplus columns of the Liva summaries will be appropriated and filled in exactly in accordance with the instructions for Kaza summaries, in accordance with Specimen No. 4, after the 10 per cent., the taking of which is ordered by law, has been deducted from all the revenue in the Yoklama summary, with the exception of the clerk's fee and cost of paper, on
Payment of tax of 10 per cent.	paying it into the Treasury, on account of the Evkaf through the local Mejlis, the receipt that will be taken from the Treasurer will be given to the Muhasebeji of Evkaf, and in its place a certificate will be got from the said Muhasebeji, stating that the amount of the payment is on hand in the safe. The Liva summary will be prepared in triplicate, and sealed by the officials who customarily seal, together with the Muhasebeji of Evkaf. One copy will be given to the said Muhasebeji to be sent to the Imperial Evkaf Ministry; another copy will be attached to the certificate that will be taken from the said Muhasebeji, stating that the

amount is on hand in the safe, and together with the balance of the revenue, that is, clerk's fee and cost of paper, will be sent direct to the Defter Khané; the other will be kept in the local Defter Khakani Office. In accordance with Specimen No. 5 Liva Summary the summary of permanent revenue will be prepared in the way explained, but the clerk's fee being the property of the Kaza Tapu clerks, only the cost of paper will be sent with the summary, &c., to the Defter Khakani.

Disposal of triplicate copies of Liva summary.

Clerk's fee.

10. The greatest care and attention should be given at the time of registration and inspection (Yoklama) for the Arazi Mevkufé procedure not to be mixed with the Arazi Mirié affairs. As the registers sent to the Defter Khakani will be compared with the Imperial records, if any confusion is observed they will be returned and the officials held responsible. Care and attention will always be taken and paid for the revenue of Arazi Mevkufé also not to be mixed with the revenue of Arazi Mirié.

Separation of affairs of Arazi Mevkufé from those of Arazi Mirié.

11. As the salaried clerks in company with the Defter Khakani officials are hardly sufficient for Tapu and Emlak matters, if the supervision and arranging of Evkaf matters is also referred to them, in some places where the Arazi Mevkufé is extensive the management will be difficult. In Sanjaks where the Vakfs are large, an extra clerk will be employed to look after Evkaf matters only. Two piastres from

Employment of extra officials.

Remuneration of extra clerk. the 10 % which belongs to the Vakf Yoklama Clerks, one piastre from the fees of 4 % of the Defter Khakani official, which are also from the Yoklama of the Vakf, one piastre from the 4 % which belongs to the Collector, and two piastres from the 4 % which belongs to the Kaza Tapu Clerks from the permanent fees will be given to this clerk. If the Chief Clerk of the Defter Khakani and his companion undertake the management without impeding the work—and this is possible—of the said fees that would be given in case a clerk were employed for Vakf work, three-fifths will be given to the Chief Clerk of the Defter Khakani, and two-fifths to his companion, and the supervision of Vakf matters will be given to them.

Extra pay of clerks who do additional work.

CONCLUSION.

How difficulties to be settled. The purport of these instructions is composed of matters the explanation of which is necessary for Arazi Mevkufé, as the current work will be carried out in the same way as the procedure for Arazi Mirié, in case of doubt as to its execution the Kaza Tapu Clerks will ask for instructions from the Defter Khakani officials, and in case of necessity the latter from the Ministry of Defter Khakani.

6. Rejeb, 1292.

26. July, 1291.

XXXII. SUBSEQUENT DECISION STAT-
ING THAT THE SAID LAW IS
NOT OBLIGATORY, AND WILL BE
CARRIED OUT WHEN PERSONS
DESIRE.

Although it was lately decided to extend in a compulsory manner to the Musakafat and Musteghillat of Mulhaka Vakfs the system of extension of inheritance which is in force in an optional manner in Musakafat and Musteghillat of Mazbuta Vakfs, but as the public benefit and satisfaction have not been attained by such compulsory extension, and as it is the wish of His Imperial Majesty to obtain the perfect pleasure and approval of all his subjects, and other possessors of property, and as forcible treatment in the rights of possession of property is contrary to the rules of justice, from the 15. Zilkadé, 1291, 2. December, 1290, the extension in a compulsory manner of this system of extension of inheritance has been abandoned, and an Imperial decree having been issued that the applica-

Law of inheritance to be permissive.

tion to Mazbuta and Mulhaka Vakfs is optional to the owners of property who desire it, and the law having also been amended in this manner, the matter is published for general information.

15. Zilkadé, 1292.

2. December, 1291.

XXXIII. LAW CONCERNING LAND.

1. Mussulman and non-Mussulman subjects have equal rights in receiving possession of village, cultivated, and Chiftlik lands in the Empire, whether or Vakf, and which are transferred by auction or alienated by individuals; if there are any Mirié or Mevkufé lands of which the granting into the possession of non-Mussulman subjects has not been carried out in obedience to the ancient usage, such usage is abolished, and the provisions of the law will be carried out without distinction.

2. The procedure in accordance with the provisions of the Imperial law will be carried out without distinction regarding land and property which Mussulman and non-Mussulman subjects receive from each other.

3. Farmers who are cultivators in certain Chiftliks, and who are Mussulman or non-Mussulman subjects, shall have preference rights at the time when land sold by auction or alienated by private individuals is being received.

7. Muharem, 1293.

22. January, 1291.

XXXIV. INSTRUCTIONS SHOWING THE PROCEDURE TO BE FOLLOWED IN THE ISSUE FROM THE DEFTER KHANÉ OF TITLE-DEEDS FOR MU- SAKAFAT AND MUSTEGHILLAT VAKFIEH IN CONSTANTINOPLE AND IN THE PROVINCES.

PROCEDURE IN CONSTANTINOPLE.

Land Office
at Constantinople.

1. The Title-Deeds Office at the Imperial Evkaf Ministry will be transferred to the Defter Khané Ministry. As in the provinces this office will be called "The Defter Khakani Office of Constantinople," all "events," that is to say, the alienation, inheritance, mortgage (Istiglal), cancellation of mortgage (Istiglal), and other proceedings regarding every kind of Arazi and Emlak in the Municipal Circles of Constantinople, will be supervised here in accordance with the established laws.

2. When the "events" of any kind of Arazi and Emlak are being carried out, marginal notes will not

be written on the old title-deeds, as in the provinces, until the Imperial title-deeds are given: a temporary certificate, in accordance with the enclosed specimen, will be issued to the owners. A note will be made against the entry in the old register, and a stamp with the sentence "new title deed issued" being put on the old title-deed, it will be returned to its owner.

3. The Defter Khakani Ministry will prepare and issue, in accordance with the tabulated registers sent to it by the Defter Khakani Office of Constantinople, the permanent title-deeds for land and properties of which the "events" have been registered and the temporary certificates issued, and the restitution of the certificates issued temporarily will be demanded. These permanent title-deeds will be issued in one form, in accordance with the enclosed specimen, for every kind of Musakafat and Musteghillat Mevkufé; but the extension of inheritance law will be printed on the back of those issued in cases where the inheritance has been extended, and the articles of law showing the rights of possession will be printed on the back of those issued to foreign subjects.

Issue of
new title-
deeds.

Issue of
new title-
deeds in set
form.

Inherit-
ance.

Foreign
subjects.

4. The title-deeds for Mazbuta Vakfs will be issued on being sealed by the Defter Khakani; and the title-deeds for Mulhaka Vakfs, after having been sealed by the said Ministry also, the Mutevelis will be summoned and made to seal them also.

Mazbuta
and Mul-
haka
Vakfs.

Separate
registers.

5. New separate registers will be kept for each one of the thirteen Municipal Circles of Constantinople, and the current events will be entered in these registers.

Auction
sale of
certain
lands.

6. With the exception of Musakafat, whether Mahlul or Ijaré Vahidé, of which the conversion into Ijaretein is necessary in Constantinople and its suburbs, and of places which are not leased to anybody, and are assigned to the public *ab antiquo*, and the sale of which is illegal by Sheri law, in the sale of sites to which there is no objection, the auction will be carried out by the Imperial Evkaf Treasury in accordance with the law, and on its termination, after the Muajele has been received, the formalities of registration in the name of the person to whom it is to be transferred will be carried out by the Defter Khané on notification from the said Ministry enclosed in the list, and the assignat shown by the owner will be taken, and in its place the title-deed prepared will be delivered.

Registration
upon
sale.

Payment of
salaries and
expenses.

7. In order that the salaries and expenses of the Title-Deeds Office, transferred from the Imperial Evkaf Office to the Imperial Defter Khané, may be paid by the Defter Khakani Treasury, the three piastres' cost of paper and one piastre clerk's fee taken on title-deeds for Arazi Mevkufé and Musakafat Vakfié will wholly belong to the Defter Khané.

8. All the revenue to be collected by the Defter Khané in Musakafat and Arazi Mevkufé proceedings

will be received by the Defter Khané Treasury. The fees of Mutevelis of Mulhaka Vakfs will be kept out of this in order to be paid to them. The remainder will be delivered weekly to the Imperial Evkaf Treasury with the specified registers. The share of these receipts belonging to the Clerk and Jabi will be at once paid to its owners by the Imperial Evkaf Ministry in accordance with the system.

Disposal of duties and fees.

9. The same system as in the provinces will be followed in Constantinople and its environs with regard to the mode of carrying out the procedure, and the issue of title-deeds for pure Mulk by the Defter Khakani officials, in accordance with the special law.

Procedure.
Title-deeds for pure Mulk.

PROCEDURE IN THE PROVINCES.

10. The records of Musakafat and Musteghillat Mevkufé in the provinces will be handed over by the Muhasebejis of Evkaf to the Defter Khakani officials in each Liva, in the same way as the handing over of the records of Arazi Mevkufé has been carried out.

Records of Musakafat and Musteghillat Mevkufé.

11. All the "events" of Musakafat and Musteghillat Mevkufé, that is to say, the alienation, inheritance, and other procedure in accordance with their special laws, will be supervised and arranged through the Defter Khakani officials. As in Arazi Mevkufé, the said officials will deliver temporary certificates in order to

Duties of Defter Khakani officials.

secure owners of property until the original title-deeds are sent from the Defter Khané. And, as in Constantinople, a stamp will be put on the old title-deeds and given to their owners.

Monthly
register.

12. In order that the permanent title-deeds may be prepared and sent, a monthly register of the Musakafat and Musteghillat Mevkufé of which the "events" have been registered and temporary certificates issued will be prepared and sent to the Defter Khakani Ministry, together with the "events" of Arazi Mevkufé.

Payment
of balances
into Local
Treasury.

13. After the fees due to the Defter Khané officials, and the share belonging to the local Mutevelis of Mulhaka Vakfs, have been deducted from the receipts from Musakafat and Musteghillat Mevkufé, the balance will be paid into the local treasury for account of the Muhasebejis of Evkaf, together with the receipts from Arazi Mevkufé. A receipt will be taken from the said Muhasebejis, which will be sent with the monthly registers to the Defter Khakani Ministry.

Fourth
share of
Mutevelis.

14. The fourth share of the receipts from Mulhaka Vakfs belonging to the Mutevelis, as stated in Art. 13, will be delivered at once to the local Mutevelis or their agents by the Defter Khakani officials, who will cause the temporary certificates to be sealed by them. The shares of the Mutevelis and Agents who are in

Constantinople will be sent with the register to the Defter Khané, the Mutevelis and Agents will be summoned from there, their shares paid to them, and the Ministry will make them seal the permanent title-deeds. In order that the title-deeds of Vakfs of which the Mutevelis and Agents have not yet been appointed, or of which the Mutevelis and Agents themselves or their Agents cannot be found on inquiry, may not be detained, the Defter Khakani officials will cause them to be sealed by the Naib, and the share will be sent to the Imperial Evkaf Treasury to be given to the Mutevelis when they appear. The permanent title-deeds will be prepared and sent to their destination by the Defter Khané, in accordance with the local registers received. Those for Mazbuta Vakfs and Mulhaka Vakfs of which the Mutevelis are in Constantinople will be given to their owners as sent from here; those for Mulhaka Vakfs of which the Mutevelis are in the provinces will be delivered to their owners after they have been sealed by the Mutevelis through the Defter Khakani officials, and the temporary certificates given before will be taken back.

Payment
of and
sealing by
Mutevelis
and agents.

Avoidance
of delay.

Trans-
mission of
title-deeds.

15. All salaries and expenses on account of the transfer of the provincial Musakafat business to the Defter Khakani will be paid by the Defter Khané, and the three piastres' cost of paper and one piastre clerk's fee taken as before on registration of "events" for new title-deeds issued for Musakafat and Musteghillat

Salaries
and ex-
penses.

Mevkufé will belong to the Treasury of the Defter Khakani Ministry.

Sale, &c.,
of certain
lands by
Muhase-
bejis of
Evkaf.

16. With the exception of land in the provinces of which the procedure has been carried out in accordance with the provisions of the Land Law, and Mahlul of Ijaretein Musakafat and Musteghillat Mevkufé, and Ijaré Vahidé Musakafat of which the conversion into Ijaretein is required, and places as stated in Art. 6 which are not let to anybody and have been assigned to public use *ab antiquo*, and the sale of which is not allowed by Sheri law, the auction, collection of Muajele, and transfer in the legal and systematic way of sites in the sale of which there is no obstacle, will as before be carried out by the Muhasebejis of Evkaf. The Defter Khakani officials will carry out the registration formalities and issue temporary certificates for registered Mahlul to the persons to whom it is sold and to whom the transfer is necessary, on production of the auction bill, and the Mazbata of the Mejlis Idaré according to law and custom.

Registra-
tion and
certificates
as to
registered
Mahlul.

Other
duties of
Muhase-
bejis of
Evkaf.

17. The Ijaré Muejele of Ijaretein Musakafat and Musteghillat in the provinces will be collected annually through the Muhasebejis of Evkaf: the auction and adjudication of Mahlul will also be carried out through them. In order to collect the Ijaré Muejele annually at the proper time; to know the properties of which the inheritance has been extended; to distinguish those

which have become Mahlul, to be a means of collecting the Ijaré, and to correct the registers kept by the Muhasebejis of Evkaf, the Defter Khakani officials will send monthly to the Muhasebejis of Evkaf a return of sales, transfers by inheritance, and other proceedings and "events."

Monthly
report of
sales, etc.,
by Defter
Khakani
officials.

SPECIAL ARTICLE.

18. Instructions regarding the office work and duties of Defter Khakani officials will be issued at different times by the Defter Khakani Ministry.

Duties of
officials.

9. Rebi ul evel, 1293.

23. March, 1292.

XXXV. APPENDIX TO ARTICLE 91
OF THE LAND LAW.

Unlawful
cutting of
wood.

If it is ascertained that the inhabitants of a village not having the right to take wood, have by encroachment taken wood from the wood which has been assigned to the inhabitants of another village, the standing value of the trees which have been cut down will be collected from the persons who unlawfully encroached and took wood, and divided amongst all the inhabitants of the village who possess the right to take wood.

10. Rebi ul evel, 1293.

3. March, 1292.

XXXVI. INSTRUCTIONS REGARDING THE PREPARATION IN A REGULAR MANNER OF CERTIFICATES RE- CEIVED BY THE EMLAK OFFICE.

1. The certificates for alienation, inheritance, and building to be brought by owners of property to the Emlak office at the Prefecture of the town will be obtained from the Imam of the quarter in which the property is situate. In order that Mukhtars may be informed of such matters, and in case of necessity be held responsible, their seal on the certificate is also necessary.

2. If one or both the Mukhtars cannot be found or will not sign a certificate, the reasons will be written in postscript on the certificate, and the postscript will again be sealed by the Imam.

3. The number of the properties, street in which the property is situated, number of title-deeds by which the property is held, name, address, calling, nationality, and extent of share of the shareholders, if any, will be

stated in a true manner in the certificates issued for sale and inheritance by the Quarters, Patriarchate and Chief Rabbi.

Certificate
as to Gedik.

4. The certificates required when any Gedik is alienated must state whether the owner is alive. After this certificate has been given by the Imam and Mukhtars of the Quarter in which the owner lives, a sealed and certified declaration as to the share and value of the Gedik will be made on the certificate by the Chief of the Trade to which it is attached, and by the Council of the Khan if the said Gedik is situated in a Khan.

Certificates
given by
Quarters.

5. The certificates given by the Quarters for alienation, inheritance, and building must not be dateless, rubbed out, or erased ; certificates in this state will not be accepted.

Notice of
property
becoming
Mahlul.

6. In order that a note may be made against the entry of a property which has become Mahlul by the death of the owner without child, it is the duty of Imams and Mukhtars to make known the fact by certificate to the Emlak Office at the Prefecture of the Town at the same time as a certificate is given by the Quarter to the Imperial Evkaf Treasury, and they will be obliged to carry out this duty.

7. Together with certificates for alienation, inheritance, and building, the owner will bring with him and

show to the Emlak Office all the title-deeds (Temesuk) which he possesses.

Production of title-deeds by owner.

8. It is the duty of all Imams and Mukhtars to return to the Emlak Office, within ten days of its issue, the permit issued by the Emlak Office for the alienation of a property if the alienation of that property has been abandoned in any way.

Return of permit when sale abandoned.

9. The said certificates will be written according to the copies given below. Application must be made to the Emlak Office for the certificate of an alienation that requires a procedure different to the conditions shown in the said copies.

Form of certificate.

CERTIFICATES FOR ALIENATION AND INHERITANCE.

This certificate has been delivered to the Emlak Office in order to show that Ali Effendi, son of Veli, of the wax Chandler trade, is the owner by three title-deeds (Temesuk) of a house No. 14 Jami Sherif Street, in our quarter, belonging to the Vakfs of Merzifoni Kara Mustafa Pasha, Amuja Hussein Pasha, and Avariz of the Aidin Ketkhuda quarter, that he is living at the present day, and that he will now alienate the said property by mortgage (Vefaen Féragh) to Adilé Khanum, daughter of Osman, wife of Ahmed Aga, of the brass founder trade, for 27,350 piastres.

Specimens of certificate.

This certificate has been delivered to the Emlak

Specimen
certifi-
cates.

Office in order to show that Rifaat Effendi, son of Mehmed, a Finance Clerk, died while possessing by two title-deeds (Temesuk) a house and garden, No. 5 Nergis Street, in our quarter, belonging to the Vakfs of Pirinji Yusuf Aga and Ahmed Ketkhuda, and that after it has been inherited by his children, Mehmed Effendi, of full age, and Khadijé Behié Khanum, minor, in equal shares, it will be alienated by the one of full age in person, and the share of the minor, by Sheri Hujet, through guardians, to Rashid Aga, son of Ahmed, of the tobacco trade, for a sum of 15,000 piastres.

This certificate has been delivered to the Emlak Office in order to show that by the death of Agiah Effendi, son of Suleiman, the owner by eight title-deeds (Temesuk) of a house, garden, and two Masuras of water, belonging to the Haremein Sherifein Vakfs, No. 42 Orkhanié Street, in our quarter, his five children, Ahmed and Feizi Beys, of full age, and Shevkié Khanum, Husni Bey, and Alevié Khanum, minors, inherit it in five equal shares. After the share of Ahmed Bey, deceased, has been inherited by his daughter Rushdié Khanum, minor, and the share of Shevkié Khanum, deceased, has been inherited by Shemsi Bey, of full age, and Murad Bey, minor—

- i. The two-fifth shares of the minors, Husni Bey and Alevié Khanum ;
- ii. The one-fifth share of the minor, Rushdié Khanum ;

- iii. The one-tenth share of the minor, Murad Bey, Specimen
certifi-
cates.
and
- iv. The shares of Feizi and Shemsi Beys, of full age,
i.e. the whole house and appurtenances, will be
alienated—
- (i.) By their mother, Derya Khanum, daughter of
Abdullah;
 - (ii.) By her father, Shefik Bey, guardian;
 - (iii.) By Sheri Hujet, by his brother Shemsi Bey,
and
 - (iv.) By personal consent, to Riza Bey, son of
Abdul Hamid Effendi for 109,000 piastres.

This certificate has been delivered to the Emlak Office in order to show that Chibukji Kerim Aga, son of Abdul Latif, the owner by two title-deeds (Temesuk) of a building site, No. 11 Imam Street, in our quarter, of 3600 ziras, belonging to the Kareki Hussein Chelebi and Hama Khatun Vakfs, will separate a piece of 975 ziras from the said building site, in accordance with the plan prepared, the front of the separated site to be, as before, on the said street, and alienate to the owner of the said house, Rifaat Effendi, son of Sherif, Customs Clerk, and his wife, Fatmetuzehra Khanum, daughter of Rejeb, in equal shares, for 20 piastres per zira, total 19,500 piastres, and that the said Aga is living at the present day.

This certificate is delivered to the Emlak Office in

Specimen
certifi-
cates.

order to show that Nailé Khanum, daughter of Abdullah, owner by one title-deed (Temesuk) of a house and garden, No. 6 Shahin Street, of our quarter, belonging to the Sultan Mustafa III. Vakf, is dead, that the said house will be inherited by her son, Majid Bey, son of Rahim Bey, that the said deceased has no other than the said child, and that the said child is living at the present day.

This certificate is delivered to the Emlak Office in order to show that the orphans of Ahmed Effendi, Paper Seller, Ali Rashid Effendi and Khadijé Safnaz Khanum, mortgagees (Vefaen) of a house with two title-deeds (Temesuk), No. 1 Chikmaz Cheshmé Street, of our quarter, belonging to the Ayaz Pasha Vakf, have received the equivalent, 5000 piastres, and will cancel the mortgage in favour of the owner, Hashim Aga, son of Yakub, of the handkerchief trade.

As Hassan Aga, son of Muhsin, Fruiterer, owner by two title-deeds (Temesuk) of one-third share of a grocer's shop, No. 155 Laléli Street, of our quarter, paying 60 akjés Ijaré Muejele, with its appurtenance, considered as 120 shares, is going to alienate by mortgage (Vefaen Féragh) his said share of the shop and Gedik to Ibish Aga, son of Mehmed, Turban Seller, for 16,000 piastres, this certificate is delivered to the Emlak Office in order to show that the said Hassan Aga is living at the present day.

BUILDING, ADDITIONS, REPAIRS, AND DEMOLITION.Specimen
certifi-
cates.

This certificate is delivered to the Emlak Office in order to show that Rifaat Effendi, son of Eshref, owner by three title-deeds (Temesuk) of a building site, No. 4 Beyjiz Street, of our quarter, belonging to the Bali Pasha Vahf, will build a house of three storeys, with five rooms and two ante-rooms.

REPAIRS AND ADDITIONS.

This certificate is delivered to the Emlak Office in order to show that Ayshé Khanum, daughter of Turmush, owner by one title-deed (Temesuk) of a house and garden, No. 2 Durt Cheshmé Street, of our quarter, belonging to the Zeineb Khatun Vakf, will make a small repair to the said house in its present form.

CONVERSION AND ADDITION.

This certificate is delivered to the Emlak Office in order to show that Izzet Effendi, son of Rifaat, owner by five title-deeds (Temesuk) of the fruiterer and grocer shops, Nos. 60 and 62, Uzun Charshu Street, in our quarter, will demolish them, and build one haberdasher's shop.

DEMOLITION.

As Rifaat Effendi, owner of house No. 3 Banka Effendi Street, in our quarter, is going to demolish it

Specimen
certifi-
cates.

in order to make it into a separate garden for the house with garden, No. 4, opposite, this certificate is delivered to the Emlak Office in order that the registration may be amended.

CERTIFICATES FROM HEADS OF TRADES CONCERNING GEDIKS.

There being a tailors' Gedik in the clothier's shop, No. 33 Aralik Street, Terzi Bashi, Grand Bazaar, and the owners being Ahmed Effendi, son of Ali, and Theodori, son of Georgi, as the said Theodori will now alienate his half-share to the said shareholder Ahmed Effendi for 7000 piastres, this certificate has been delivered to the Emlak Office in order to show that the said Gedik is truly theirs, and that this sum is its value.

CERTIFICATES FROM THE PATRIARCHATE, CHIEF RABINATE, CHURCH AND COMMUNITY COUNCILS.

Seller.

As Peshtamalji Oglu Agop, son of Mardiros, resident in Tatavla, of the Curiosity Trade, is going to alienate by mortgage (Vefaen Féragh) for 20,000 piastres, his house, No. 35 Bali Pasha Street, Muhsiné Khatun quarter, in the vicinity of Kum Kapu, this certificate is delivered to the Emlak Office in order to show that he is living and an Ottoman subject.

Buyer.

As Kyserli Oglu Georgaki, son of Vasil, printer, resident in the Etmekji quarter, is going to purchase for 20,000 piastres a house, No. 35 Bali Pasha Street, Muhsiné Khatun quarter, in the vicinity of Kum Kapu, this certificate is delivered to the Emlak Office in order to show that he is an Ottoman subject.

Specimen
certifi-
cates.

XXXVII. ACTION NOT TO BE TAKEN
IN THE COURTS AND PUBLIC OF-
FICES BEFORE THE VERGI ON
PROPERTY HAS BEEN PAID.

Vergi to be
paid before
hearing of
action or
search of
register.

In order to facilitate collection, a Vezirial order has been issued to the Sheikh ul Islamate, and the Ministries of Finance, Evkaf, and Defter Khakani, that no actions with regard to property in Constantinople and the three cities are to be heard in the Courts, or search made in the registers of the Evkaf and Defter Khakani without the production of receipts for Vergi.

10. Rebi ul Akhir, 1293.

22. April, 1292.

TRANSLATION OF NOTES IN LÉGIS- LATION OTTOMANE.

Notes to I.

NOTE (a). In the second section of private rights we have classed—

1. The legislation which exceptionally governs some categories of landed property, and specially those of public lands (Beit-ul-Classifica-
mal), that is landed property of the State considered as an in- tion of
dividual, property of which only the possession (Tesarruf), that is, land.
the whole produce with part of the rights of property, is granted to Nature of
individuals in virtue of a title-deed (Tapu). This possession of tenure.
public lands thus becomes under certain conditions an object (1) of
legal possession; (2) of hereditary transmission; and by the per-
mission of the competent authority (3) of alienation to living persons
whilst their nuda proprietas belongs to the State. This legislation
is also applicable to lands which, separated from the public lands,
have been converted subsidiarily into vacoufs, either by the Sultans,
or by all others with the sovereign authorisation, which vacoufs must
be distinguished from properly called vacoufs.

We have classed this legislation separately because freehold property (dominium plenum) of private persons (Mulk) is governed by the rules of common right, that is, by the books of religious jurisprudence (Fikh) (see Art. 2-3 of the Land Law, and the note 25).

2. The legislation which exceptionally regulates the legal standing, both commercial and maritime, relative to private rights (see the following note).

b. An exact translation of the text of the law inserted in the article of M. Belin, an eminent Orientalist, "On landed property in Mussulman countries, and especially in Turkey" (Chapter XI. extract

No. 9 of the year 1861, of the Asiatic Journal, pages 180-248). As regards the supplementary laws, modifying or relative to the Law in question it must be observed :—

- Code: how completed. 1. That the Law has been completed (*a*) by a regulation about the Tapus, or about the title-deeds; and (*b*) by other regulations on title-deeds of vacouf property, which are classed following the Law as legislation about private right, whereas the legislation specially relative to the administration of public property, and that relative to the administration of the Evkaf, have been classed in the administrative law (Lég. Ott. Vol. II.).
- Extension of rules of inheritance. 2. That the same Law, by the promulgation of new laws relative to the extension of the right of inheriting lands Mirié and Mevkufé, and (*b*) to the forced sale of lands, hypothecated or not, has been essentially modified, especially in Chapters III. and IV. of the Book 1, Art. 115, and elsewhere. The respective laws are pointed out in the notes to the modified articles.
- Rights of aliens. 3. With respect to the right of foreigners to hold immovable property, whose Government has adhered to the Protocol in virtue of which foreigners can be allowed to enjoy the right of holding immovable property (No. 13, page 168); (2) The Protocol ad hoc, Lég. Ott. Vol. I., No. 8, pages 22, 23, the Circular of the Sublime Porte, Lég. Ott. Vol. I., No. 9, page 25.
- Gift of lands to colonists. 4. With respect to lands granted gratuitously by the Imperial Government to the colonies established in Turkey, see the special law ad hoc on the colonisation in Turkey of foreign families (Lég. Ott. Vol. I., No. 6, p. 16, and especially Arts. 4, 8 and 9).
- Comparison of rules. 5. Compare also the rules relative to the attributions of the Administrative Councils who are to manage all that concerns the rents of vacoufs and the revenues of the Tapou (Lég. Ott. Vol. II., Law concerning the Vilayets).
- Description of Code. 6. It must be observed, finally, that the law extending the right to inherit designates the Code in question by the title of Code of Landed Property, whilst the law of forests designates the same codes by the title Rural Code.
- (1.) See following, 5, 6, 9-11.
(2.) See the following notes, 5, 12, 15.

(3.) See the following notes, 5, 16, 18, 20.

(4.) See the following notes 5, 21-22.

(5.) See the following Art. 6 and note 23.

According to the Roman law *de rerum divisione*: "*Quædam Roman naturali jure communia sunt omnium, quædam publica, quædam Law. universitatis, quædam nullius, pleraque singulorum*" (pr. Instit. 2, 1); and according to the Law 1 pr., Dig. 1, 8: "*summa rerum divisio in duos articulos deducitur: nam aliæ, sunt divini juris, aliæ humani. Divini juris sunt veluti res sacræ et religiosæ . . . hæ autem res, quæ humani juris sunt aut publicæ sunt, aut privatæ: quæ publicæ sunt, nullius in bonis esse creduntur, ipsius enim universitatis esse creduntur privatæ autem sunt, quæ singulorum sunt.*"

(6.) According to the Roman laws: "*Privatæ res sunt, quæ singulorum*" (see note 5). Compare also Arts. 537 and 544 of the Civil French Code.

7. The *karié* signifies the agglomeration of inhabitants forming *Karié*. a circumscription of the lowest order, the commune; *kasaba* con- *Kasaba*. sists of one or more communes; the Canton (Belin).

8. Literally. The servitude of the ground Mulk belongs to the *Servitude*. proprietor; *rakabe*, which is used principally for persons, for living beings, signifies the nape, the lowest part, of the neck, on which, in animals, the yoke rests; it is therefore the servitude of the land which is in the dominium plenum of its proprietor.

9. See above, note (a) and notes 5, 6.

10. The word *Beit-ul-mal* signifies properly house of property. *Meaning of* It is the name of the Mussulman administration which collects all the *Beit-ul-* estates and all the portions of a vacant inheritance. It keeps also *Mal*. in deposit, and it administers the property of the absent who are joint heirs but have left no representatives with powers of attorney (*Solvat Mussulman Estates*, page 21, note 2), as regards especially the attributions of the *Beit-ul-mal*, concerning estates in general, and in particular on estates escheated, see (1) the rules about the Inventory of Estates (*Lég. Ott. Vol. I., No. 10, page 27-40*) and (2) the Vezirial Order about Christian estates (*Lég. Ott. Vol. I., No. 11, pages 41 to 44*); see also Art. 111 of the Law.

As regards the right of succession of the pious foundation (*piæ*

- Succession of pious foundation. causæ) to the vacant possession of vacouf lands held by private persons, see Art. 3 of No. 19.
- Roman Law. The right of the Beit-ul-mal, which corresponds with fiscus of Roman law, has been preserved also (1) in the Roman laws: "vacantia mortuorum bona tunc ad fiscum jubemus transferri, si nullum ex qualibet sanguinis linea vel juris titulo legitimum reliquerit intestatus heredem" (Lex 4, Ccd. 10, 10. Compare also Lex 96, § 1, Dig. 1, 3; Lex 20, § 7, Dig. 5, 3; Lex 1, pr. Dig. 38, 9); and (2) in the Civil French Code (Arts. 33, 539, and 768).
11. See above, note (a).
- Res fiscales:* 12. According to Roman law, "res fiscales"—that is, "loca quæ
res publicæ. sunt in fisci patrimonio" (Lex 2, § 4, Dig. 43, 8); they are however contained in the generic expression "res publicæ:" "si quid publici est, ejus nihil venit, si res non in uso publico sed in patrimonio fisci erit" (Lex 72, § 1, Dig. 18, 1); and for that see the note below, 22.
- Multezims. 13. Farmers for a term, or grantees of iltizam (Belin).
- Muhassils. 14. According to M. de Hammer, this word signifies a Pasha to whom the Porte has granted for life malikiané (in the form of Mulk), the collection of the whole revenue arising from the taxes of a sanjak, district of the second class (Belin).
- Title-deeds. 15. For the Tapu Law and the Regulations as regards the title-deeds of mevkufé lands, see below, note 20.
- Division of Arazi Mevkufé. 16. According to Roman law: "Res divini juris sunt veluti res sacræ et religiosæ" (Lex 1, or Dig. 1, 8); "sacra loca ea sunt quæ publice sunt dedicata, sive in civitate sint, sive in agro" (Lex 9, eod.).
- Laws. 17. Successive ordinances of the sovereigns and following civil laws decreed by the Ottoman Sultans (Worms, Belin).
- Imperial grants. 18. According to Roman law: "Locum publicum tunc sacrum fieri posse, cum princeps eum dedicavit, vel dedicandi dedit potestatem" (Lex 9, Dig. 1, 8).
- Taxes, &c. 19. Rusum or rusumat is a generic term which seems to mean, as well as Miriyat, all the taxes except the tithes and the customs,

which would correspond with the indirect taxes of France (Belin).

20. As regards (a) the right of possession and the various Classes of categories of vacouf lands, and (b) the granting and the form of Vakf lands. their title-deeds, compare to (a) Chapter I. (Arts. 1 to 6) of No. 19; to (b) Arts. 7 to 35 of the same Law and the other Instructions and Regulations about the title-deeds of vakf lands (Nos. 8 and Title to 9). As regards the titles of possession of mevkufé lands, belonging lands. to the State domain (Beit-ul-mal) which are to be drawn up by the financial functionaries, and of which, however, the drawing-up has been confided to the functionaries of the general administration of the Vacoufs, see the order on the re-organisation of the Vacoufs, classed in the Administrative Law, Lég. Ott. Vol. II., under the title Administration of Vakfs.

As regards lands annexed anciently to a church or a monastery, see Art. 122; finally, as regards Vakf Forests, see the Forest Law, Lég. Ott. Vol. II., and especially Art. 19.

21. "Viarum quædam publicæ sunt, quædam privatæ, quædam Highways. vicinales. Publicas vias dicimus quas Græci βασιλικὰς appellant" (Lex 22, 23, Dig. 43, 8). As regards French law, compare Art. 538 of the Civil Code.

22. According to the Roman law, "res publicæ"—that is, "loca Common quæ publico usui destinata sunt" (Lex 2, §§ 2-5, Dig. 43, 8); accord- lands. ing to the French Civil Code, things which belong to no one, and the use of which is common to all (Art. 714); but by the expression "res publicæ" of Roman law are intended also such things, which are distinguished from other things by this only, that their owner is not a private person, but is the Government itself or a certain commune (compare Lex 2, § 4, Dig. 43, 8; Lex 17, Dig. 50, 16; Lex 72, § 1, Dig. 18, 1).

23. According to Roman law, "res nullius," because "quod Waste humani juris est, plerumque alicujus in bonis est, potest autem et lands. nullius in bonis esse;" whilst "quod divini juris est, id nullius in bonis est;" that is, he is in all cases considered as "res nullius" (Lex

1 pr., Dig. 1-8). As regards French law, compare Arts. 539 and 713 of the Civil Code. See below, Arts 103 to 105.

Mute-
ferikat.

24. That is, "trees growing naturally on certain ground" (Art. 106), "mines" (Art. 107), "lands in escheat of an Ottoman subject who has abandoned his nationality" (Art. 111), "property of slaves" (Art. 112), "church property" (Art. 122), "water for drinking and for irrigation" (Art. 124), "rice grounds" (Art. 128), "communal lands" (Art. 130), "Chiftlik" (Art. 131), "land recovered from the sea" (Art. 132).

Mode of
possession.

25. This property (tesarruf) of the State lands presents in some respects affinity (1) with the "*locatio perpetua agrorum civitatis vectigalium*," on the one hand; and (2) on the other hand, with the "*usufruct*" of the Roman legislation: it holds the middle place between these two institutions, holding the *dominium ususfructus* in opposition to the *dominium proprietatis* which belongs to the State. The lands of the public domain (*Mirié*) of the Ottoman Empire and those of the Roman State (*agri publici*) have the same origin. According to the principles of the *jus gentium* of the ancients, preserved also in the Roman law, "*Quæ ex hostibus capiuntur, jure gentium statim capientium fiunt*" (Lex 5, § 7; Lex 51, § 1, Dig. 41, 1), but the booty was given up to the State, and the conquered land became also *ager publicus* (Lex 13, Dig. 48, 13; Lex 20, § 1, Dig. 49, 15). These *agri publici* on the one part are "*qui in perpetuam locantur*;" that is, with the condition to pay a rent in virtue of which they could not be dispossessed, neither those to whom they had been granted nor their heirs (Lex 9-11, Dig. 39, 4; compare also Lex 1, Dig. 6, 3). On the other hand, these lands (*Mirié*), which have become so by conquest, according to the principles of Mussulman rights of war, are those which have been granted to individuals as a possession (tesarruf). See note (a).

Title-
deeds.

26. See end of Art. 3, and note 15.

Tilling
imperative.

27. According to Roman law, "*fructuarius causam proprietatis deteriore facere non debet, meliorem facere potest*" (Lex 13, § 4, Dig. 7, 1), because "*usus fructus est jus alienis rebus utendi, fruendi salva rerum substantia*" (Lex 1, Dig. 7, 1); and according to the French Civil Code—the right to enjoy or use things of which another is the proprietor, like the owner himself, but on condition to preserve the substance (Art. 578); as sanctioning the provisions

of Art. 9, the law permits by Art. 68 and elsewhere the termination of the right of possession on account of non-production during three consecutive years, in conformity in some respects to the French Civil Code (Art. 618), and to Roman laws (Lex 1, § 5, Dig. 7, 7). See Art. 68, and note.

28. Chair, properly a meadow where grass grows sufficiently Meadows. high to be mowed (Belin).

29. According to Roman law, "quidquid in fundo nascitur, quid- Produce. quid inde percipi potest, ipsius fructus est" (Lex 9 pr., Dig. 7, 1); that is, as regards the usufruct of land, "all that it produces and all that can be gathered or collected from it is part of its produce."

30. That is, "fallow land," and according to the Roman expression Fallow. "terra novalis." Those lands are called fallow lands which remain uncultivated for a year, and which the Greeks call *πεδός* (Lex 30, §§ 2, 50, 16).

31. See Arts. 13-14.

32. See Art. 9, and note 27.

33. According to Roman law, "a neighbour cannot go either on Trespass. foot or on horseback through the field of another provided the field does not owe him servitude, but every one is allowed to make use of a public road" (Lex 11, Cod. 3, 34). There is only one case where one is obliged to grant a passage without servitude "when Right of the public road is destroyed or covered by the waters of a river passage. which has overflowed its banks, the nearest proprietor must furnish another" (Lex 14, § 1, Dig. 8, 6). Compare French Civil Code, Arts. 682-685.

34. "If the whole of a field must be a path or a road, the Right of owner of the land subject to such conditions cannot do anything to way. prevent the carrying out this in any part of the field" (Lex 13, § 1, Dig. 8, 3). "But it is agreed that the owner of the dominant land must always pass by the road which he has once taken, and he has not the right to change it" (Lex 9, Dig. 8, 1).

As regards these servitudes, "iter, actus, via," of Roman law, compare also the Law 1 pr., 7 pr., Dig. 8, 3; pr. Inst. (2, 3); and Law 16, Dig. 8, 1. As regards, however, private roads, "quae ad

agros ducant, per quas omnibus commcare liceat," and which are considered as "viæ publicæ," compare the Law 2, § 23, Dig. 43, 8.

Trespass
unlawful.

35. According to the Roman law: "Si quis clam aut vi agrum intraverit, vel fossam fecerit, interdicto quod vi aut clam tenebitur" (Lex 9, § 3, Dig. 43, 21). "Quid sit vi factum vel clam factum videamus. Vi factum videri . . . si quis contra quam prohiberetur fecerit, . . . si quis jactu vel minimi lapilli prohibitus facere perseveraverit facere . . . Clam facere videri, . . . eum qui celavit adversarium neque cum denuntiavit, si modo timuit ejus controrsiam aut debuit timere," &c. (Lex 1, §§ 5-8, Lex. 3. §§ 7-8, Dig. 43, 24). According to the Law 12 (eod.) "colonus et fructuarius fructuum nomine in hoc interdictum admittantur" (compare also Lex 3, §§ 13-16, Dig. 43, 16; and as regards the utilis actio negatoria vel emphyteuta Lex 16, Dig. 8, 1). As regards French law, compare Rural Code (Law of 28 Sept., 1791, Art. 17).

Partners'
lands.

36. According to Roman law, "in communione vel societate nemo compellitur invitas detineri" (Lex 5, Dig. 10, 3); also, according to French law, "no one can be compelled to remain without division" (Civil Code, Art. 815).

Division or
severance.

37. By Roman law, "communi dividundo judicium locum habet et in vectigali agro"; but in opposition to the provisions of Art. 15, "judex magis debet abstinere in regionibus divisione" (Lex 7 pr., Dig. 10, 3; Lex 10, Dig. 10, 2). However, compare as regards the division of common usufruct, the Law 7, § 10, Dig. 10, 3, and the Law 13, § 3, Dig. 7, 1. As regards French law, compare the Civil Code, Art. 815, and the subsequent (1872) 597; the Code of Civil Procedure, Art. 966; and the following, but especially Arts. 984, 985. See also the notes 38-42.

Finality of
division.

38. In conformity with Roman law, according to which "judicem in prædiis dividundis quod omnibus utilissimum est, vel quod malint litigatores sequi convenit" (Lex 21, Dig. 10, 3).

The same.

39. In conformity also to the Roman law, according to a Rescriptum Imperatorium: "Si inter vos, majores annis viginti quinque, rerum communium divisio relicta vel translata possessione finem accepit, instaurari, mutuo bona fide terminata consensu, minime possunt" (Lex 8, Cod. 8, 38); but the division may be rescinded on account

of fraud or deceit, or if there has been "*perperam sine iudicio*": Voidability "Majoribus etiam, per fraudem vel dolum vel perperam sine iudicio of division. factis divisionibus solet subvenire; quia in bonæ fidei iudiciis, quod inequaliter factum esse constituerit, in melius reformabitur" (*Lex* 3, Cod. 3, 38). As to the French law, according to which the claim for rescission is admitted on account of violence or fraud or wrong to the extent of more than the fourth, compare Arts. 887-892.

40. Procedure to follow.—Compare (1), as regards the Roman law, Procedure Dig. 10, 3, Cod. 3, 37: "*Communi dividundo*," Cod. 3, 38, "*com- upon divi-*munia utriusque iudicii tam familiæ erciscundæ quam commune sion. dividundo." As regards (2) the French law, compare the articles mentioned in note 36; as regards, however, the nullity pronounced in Art. 17, see Art. 36, of which it is the consequence.

41. *Veli* means the natural guardian, he who is invested with Natural this qualification by right of blood relationship; this right belongs guardian. only to the father and grandfather; the mother is not *veli*, but the will of the father can appoint her guardian.

Vesi is the guardian named by will.

Kaim is the guardian appointed by the authority when there Legal is neither *veli* nor *vesi*. (Tornauw, '*Mussulman Law*,' page 290.) guardian.

42. As regards Christian minors, see the Vezirial order "On the Infants, Inventory of Christian Estates," *Lég. Ott.* Vol. I., No. 11, p. 41; as lunatics, &c. regards the provisions of Roman law relative (1) to minors in case of division, compare the Law 7 pr., Dig. 27, 9, and the Law 17, Cod. 5, 71: (2) to the mad (*furiosi*) compare the Law 2, § 3, Inst. 1, 24; Law 7 pr., § 3; 10, §§ 1, 13, 17, Dig. 27, 10: and (3) to idiots (*fatui*), the Law 2, Dig. 3, 1; Law 21, Dig. 42, 5. As regards the provisions of the French law in case of the division of property belonging to minors, see Arts. 465, 466, and 817 of the Civil Code; and Arts. 968, 984 of the Code of Civil Procedure. As regards those of full age who are in an habitual state of imbecility, insanity, or mania, and who are assimilated to minors, see Arts. 489 and 509 of the Civil Code.

43. Land where the *Pernar* grows (in Albanian *toske*, *prinari*; in Pernallik. Greek, *prinari* or *prinos*), oak, holm oak, a small kind of green oak, *Quercus ilex* of *Linnaeus*; in Italian *ilice*, *elcina*, *elec*, *lecio*. There

is also another kind of pernar—that is, the oak kermes, the *Quercus coccifera* (Belin).

Right to
cut wood.

44. To decide according to Roman law what the usufructuary of land may take from a wood, which is part of it, it must be ascertained whether it is a copse (*sylva cædua*) or a pasture (*sylva pascua*). According to the Law 30, Dig. 50, 16, *sylva cædua* is a wood where one cuts down as wanted; which, after having been cut even with the ground, reproduces itself from the stem or the roots, and *pascua sylva* is a wood destined to be food for cattle. The usufructuary may then cut down the underwood and the reeds, and even sell them (Lex 9, § 7, Dig. 7, 1), and especially “may take props and branches of trees; but in a wood, not a copse, may take stakes to prop up his vines, provided he does not injure the land” (Lex 10, eod.). But if the trees are grown-up forest trees, he may not cut them down: “sed si grandes arbores essent, non posse eas cædere” (Lex 11, eod.). As regards the usufruct of woods, according to French law, compare Arts. 590–594 and 1403 of the Civil Code; see also the following note 53, Art. 28 modified, and Art. 30.

45. In the text of M. Belin there is the word “only,” which we have altered to the word “also.” (See the modern Greek translation inserted in the Ottoman Codes of M. D. Nicolaides, page 434.)

Rights of
partner.

46. “In re communi neminem dominorum jure facere invito altero posse” (Lex 28–29; Dig. 10, 3). Compare also the Law 13, § 3, Dig. 43, 24, according to which “si ex sociis communis fundi unus arbores succiderit, socius cum eo hoc interdicto” (that is, “quod vi aut clam”) “experiri potest, cum ei competat, cujus interest.” (See Arts. 25 and 35, note 68.)

Limitation
of actions.

47. According to the Roman law, the time prescribed by Justinian to lose the usufruct by not availing of it or not profiting by it for ten years between persons present and twenty years between absent persons, in virtue of the Law 16, Cod. 3, 33, according to which the usufruct cannot be lost unless they oppose the usufructuary, on grounds with which the owner himself, absent or present, might be repulsed who claimed his property. As to the French law, compare the Arts. 2219–2261 and Arts. 2265–2270; see, however, Art. 78.

48. That is, the less value caused by the use that may have

been made of the land, the deterioration that it may have suffered (Belin) as regards the buildings, or plantations of vines, and trees tear. Wear and
arbitrarily grown, compare hereafter Art. 35.

49. Contrary to Roman law, by which the usufructuary of any land whatsoever interfered with in his occupation or plundered violently (dejectus) has an action to recover all the produce which has been collected (Lex 60, Dig. 7, 1). Everything which is part of the usufruct must be given back to the usufructuary, who has gained his suit (Lex 5, § 4). As regards French law, compare Arts. 548-550, 597, and 613-614 of the Civil Code. No claim for mesne profits against illegal occupier.

50. With respect to this *jus tollendi*, compare the Laws 37, 38, Dig. 6, 1; and Art. 555 of the French Civil Code. (See Art. 35.)

51. In conformity with the precept of the Roman law, "*Nemo sibi ipse causam possessionis mutare potest*"; and of French law, according to which those who hold for another can never obtain by prescription, however great the lapse of time. Compare Roman law, Lex 33, § 1, Dig. 41, 3; Lex 2, § ult., Dig. 41, 4; Lex 1, Dig. 41, 6; Lex 3, §§ 19, 20; Lex 9, Dig. 41, 2; Lex 1, 6, §§ 2, 3, Dig. 43, 26; Lex 23, Cod. 4, 65; Lex 5, Cod. 7, 32; also French law, Civil Code, Arts. 2236-2240. Estoppel of lessee or borrower.

* See about prescription acquisitive of the possession (*tesaruf*) of State lands, Arts. 20 and 78.

52. *Kishlak*, place for encampment, commonage, and pasture of *Yaylak*; beasts during winter; *yaylak*, the opposite of the preceding, place of encampment and feeding for animals during summer (Belin). *Kishlak*.

53. According to the Roman laws, the usufructuary may improve the thing (see note 27), but on condition that he shall not change its form; this is the reason why, "if the land is a simple pleasure-ground where there are groves, walks, or alleys shaded by barren trees, he must not destroy them to replace them by fruit trees, or substitute pleasure gardens by kitchen gardens which produce revenue" (Lex 13, § 4, Dig. 7, 1). Compare French Civil Code, Art. 578. Conversion illegal.

54. By virtue of the law of accession, and this because "*arborem quæ in fundo continentur, non est separatum corpus a fundo*" (Lex planted. Things

40, Dig. 19, 1). Compare also, on the right of accession, Arts. 551, 552 and 555 of the French Civil Code.

55. See note 50. As to joint owners, see Art. 26.

Palamud. 56. In Greck *βάλανος*; in French gland, vallonée (valonea); in Arabic bellout; in Turkish pilit and palamout.

Gurgen. 57. The yoke elm, *Carpinus betulus* (Belin).

58. Oak, *Quercus robur* (Belin).

59. See note 54, and the note following.

Forests. 60. According to the Forest law, dated "11. Sheval, 1286" (1 January, 1870), the forests of the Ottoman Empire are divided into four categories: (1) The forests belonging to the State, (2) those depending on the Evkaf, (3) the communal forests or Baltalyks, (4) the woods and forests of private individuals. All that concerns the woods and forests of the last category having been provided for in the Ottoman Rural Code (see note *b* in fine), the provisions of the present regulations are not applicable (Art. 1 of the regulations in question, classed in the Administrative law, Lég. Ott. Vol. II.). See also the law on the extension of the right of Inheritance, Art. 5, in virtue of which the provisions of the Law are kept in force). Nevertheless, these provisions relative to forests, miriye, held by private persons have been in part repealed, in part modified, by an Imperial order annulling the principle of the right of accession legalised by Art. 29 of the Code; herewith the official note inserted in the said regulations.

Repeal of
injurious
provisions.

"According to the Ottoman Rural Code, trees growing naturally on State lands (*arazi mirié*) belong to the State, and the holder of the ground must indemnify it for the value of the wood which he gets. This regulation being prejudicial to the owners of the lands, and causing depreciation of agricultural property, all the articles of the Rural Code which created these rights of the State on the said trees have been repealed by Imperial Ordinance dated 16. Sheval, 1286 (6/18 January, 1870)."

61. See Arts. 25, 26, and 28.

62. Mubah, abandoned to the first occupier (Belin), consequently *viva derelicta*. See Arts. 103-105.

63. The provisions of Art. 30, that "the standing value of the Right to trees cut down shall be paid, for account of the Miri, that is the timber State," appears to have been modified in consequence of the abolition of the right of the State to these trees. See note 60.

64. See Art. 25, about the planting of vines or fruit trees. New build- According to the Roman law the usufructuary could not even erect ings. a new building unless it were necessary for storing the *fruits* of the crop (Lex 13, § 6, Dig. 7, 1). See the following article.

65. See the preceding note.

66. Place of the mill-stone, a space of ground. Area, or circular Threshing-space where the grain is piled up in stacks after the harvest; some floors. times threshing the corn is done there. The Khirmen yeri is always barren ground (Ami Boué and Belin, No. 334, p. 144).

67. Vines planted on the ground of another become part of the Ownership ground, and, if they have been planted by a holder of bad faith, he of vines. cannot even get back the expenses he has gone to in this respect (Lex 1, Cod. de rei vindicatione in fragm.; Cod. Gregor.). Respecting the jus tollendi of the owner, see also Art. 22 and note 50.

68. If an individual has built a house on ground belonging to Rights of him and to you, right requires that it should be common to both joint (Lex 16, Cod. 3, 32); but if he who has built was acting in good owners. faith, the claiming a part of the house is allowable on condition of paying half the expenses (Lex 16, eod.). See Arts. 15-19. In case the buildings or plantations have been made, not on the whole of the joint land, but on certain parts, they shall make a division (see the Art. in fine). In the case of grafts, see Art. 26.

69. In the Greek translation of the code in question the text of Erection of § 3 is translated as follows:— buildings, &c., upon another's land.

"If the value of these buildings, once pulled down, and of these trees, rooted from the soil, exceeds that of the land which is covered by them, the individual who proves his right to the soil will receive its just value, and the buildings and trees in question will remain in the hands of their owner. But if the ground is valued at more than the buildings and the trees, then the value of these things will be calculated as if they were pulled down or rooted up, and the owner will be compensated according to this value, whilst

the trees and buildings will become the property of the person who has proved his right to the land." (See the Ottoman Codes by M. D. Nicolaides, page 438.) As regards that the claimant must be ready to restore to the owner who is acting in good faith, under pain of forfeiture of his claim according to Roman law, it is necessary to compare the Law 38, Dig. 6, 1, of which here is the translation :—"You have built or sown on ground which you had imprudently bought from some one to whom it did not belong; your seller has been evicted subsequently by the true owner. A just judge will act in this respect according to the persons and circumstances. Let us suppose that the owner had done the same thing that you have, he must, to enter into possession of his land, take into account your expenses, but only so far as you have improved his land; but if you have spent more than his land is worth, he will pay you only your expenses. Let us further admit that he is poor, then it will suffice that he allow you to take away all that you can take away, provided also that his land does not become of less value than it had before the building which you have erected." As regards French law, you must compare the Art. 555 in fine of the Civil Code, of which this is the text :—"If the plantations, buildings, and works have been done by a third evicted party, who has not been condemned to the restitution of the profit, on account of his good faith, the owner cannot demand the destroying the works, plantations, or buildings, but he will have the option of paying the value of the materials and the wages of the workmen, or to pay an amount equal to the increased value of the ground."

However, according to Roman law, it has been decided also that if the proprietor is ready to give to the owner the sum which this latter could realise by taking away all that he had added to the land, he would be allowed to do it; for one must not lend a hand to the malignity of landowners. (Compare the said Law 38, Dig. 6, 1.)

70. See, as regards the *communio possessionis*, Arts. 15-19, § 2, 35, and 41-43.

Alienation by sale, &c. 71. "Firagh," abandon. This word is often joined in the hudjets to the word *teslim*, "consignation." It corresponds exactly (says M. Belin) to the "*traditio*" of Roman law; but we can say that it

corresponds rather to the term "alienatio," which signifies in general an act by which a person transfers to another a right belonging to him, and that because the "traditio" may be considered as a certain form of the agreement relative to the transfer of the property, but not in all cases like the agreement itself. The incorrectness of the expression of § 10, Instit. 2, 1, to which perhaps M. Belin alludes, is expressly acknowledged in the Law 31 pr., Dig. 41, 1, according to which "nunquam nuda traditio transfert dominium, sed ita si venditio aut aliqua justa causa præcesserit, propter quam traditio sequeretur." The sense then of the term "firagh" consists in the alienation between living persons by a contract of sale, exchange, or gratuitously, not of the property of the land, which belongs to the State (note (a), Art. 25), but of the right of enjoying it ("dominium utile" or "dominium usufructus") which belongs to the possessor, and which is nothing more than *jus in re aliena*; that is to say, a right to the property of another for obtaining which the consent of the contracting parties and the permission of the competent authority are sufficient (Arts. 36-37). See note 76. In the Greek edition of the Ottoman Codes this word has been translated by the term *παράχωρησις*—that is cession (page 438), a term which M. Belin also has employed in the rubric of Book I. As regards the term "sale," it must be observed that it is improper on account of the act of donation, which is contained in the term "firagh." However, in the Roman laws the terms "alienatio" and "venditio" are identified: "emtionis verbo omnem alienationem complexa videretur" (Lex 29, § 1, Dig. 40, 7. Compare also Law 55, Dig. 18, 1; Lex 55, Dig. 44, 7; Lex 109, Dig. 50, 16).

72. See Art. 55, modified and continued.

73. See Art. 59, modified and following.

74. According to the Greek translation: "In the same way for Exchange. the exchange of lands, the permission of the functionary *ad hoc* is indispensable" (the Ottoman Codes, page 438). As regards the fees to be paid in the case of Exchange, compare Art. 7 of the Tapu Law.

75. "It is certain that consent must have place in sales and purchases; besides, when the parties are not agreed, either on the

Consensus
ad idem of
parties

sale, the price, or any other point the purchase is imperfect" (Lex 9, Dig. 18, 1). Also, "sive venditio, sive donatio, sive qualibet alia causa contrahendi fuit, nisi animus utriusque consentit perducere ad effectum id quod inchoatur non potest" (Lex 55, Dig. 45, 1). Also, especially as regards donations, "non potest liberalitas nolenti adquiri"—liberality cannot be acquired against the will of the giver (Lex 19, § 2, Dig. 39, 5; and Lex 10, eod.). About the consent of the buyer or the "copermuter" in French law, compare Arts. 1108-1112, 1582-1583, and 1703. As regards donations between living persons, they do not bind the donor, and have no effect but from the day that they have been accepted in express terms (Art. 932 of the Civil Code). Compare also Arts. 893, 894, and 931-966 of the same Code. With regard to the procedure to be followed and the fees of registration and other expenses for drawing out the title-deeds, compare the Tapu Law, Arts. 1-4, 6, 7, 9, 10, and 14.

Delivery of
possession
needless.

76. Consequently the delivery of the land into the power of the buyer does not appear to be indispensable for acquiring the right of possession by this person as regards the seller, and this in accordance to French law, according to which "the sale is perfect between the parties, and the property belongs by right to the buyer as regards the seller as soon as they have agreed on the thing, and the price, although the thing has not yet been delivered nor the price paid" (Art. 1583 of the Civil Code). However, as regards third parties, the law of the 23rd March, 1855, has re-established the necessity of the transcription at the office of Hypothecation of all acts between living persons relative to the transfer of immovable property or real rights susceptible of being hypothecated, a system which was in force before the Code. Compare Art. 1 of the said law, and Art. 3, according to which until the transcription, the rights resulting from the acts (already mentioned) cannot be opposed to third parties who have claims on the immovable, and who have maintained them by conforming to the laws. As regards Roman law, notorious is the rule, "traditionibus dominia rerum, non nudis pactis transferantur" (Lex 20, Cod. 2, 3); that is, property by delivery can be transferred, and not by naked agreements. However, we must observe that the object of the transmission in question, is not the property, but the *jus in re aliena*; but for

obtaining such a right on the property of others, the delivery was not in all cases indispensable even in Roman law.

77. In conformity to French law, according to which if the buyer Purchase- has not paid the price, the seller can demand the cancelling of the money. sale (Art. 1654 of the Civil Code; compare also Art. 1655-1656, and the law of 23rd March, 1855, on transcription). As regards Roman law, "a suit to cancel a sale is not granted to annul a perfect sale, but only to pay the price of the sale, unless it has been specially agreed in the contract" (Lex 6, Cod. 4, 49). Also, "if you have really sold and not donationis causa your vines" (says an imperial rescript), "and that the price of them has not been paid, you have an action to sue for the payment but not the return of the vines, which you have delivered" (Lex 7, Cod. 4, 38). Compare also Lex 3, Cod. 4, 44; Lex 7, Cod.; but if the sale has been stipulated with the binding clause, (*lex commissoria*) that is, by which the seller and the buyer agree that the sale shall be cancelled if the price is not paid within a fixed time—in this case the cancelling can be demanded by the seller. "If a piece of land has been sold with the binding clause, it is better to decide that the sale shall be cancelled upon condition, than to say it was conditional." Compare generally chapter III. of Book XVIII. Dig. de lege commissoria; compare also Art. 1656 of the French Civil Code.

78. However, the definitive alienation can be annulled or decided Voidability in the following cases :—A. It can be annulled (*a*) in favour of the of sale. seller on account of force (see Art. 113); (*b*) in case it has been stipulated on conditions considered illegal by common law (the religious law) (see Art. 114); (*c*) in case of legal incapacity of one of the contracting parties, that is to say, in the alienation or acquisition of lands by minors, insane, or imbeciles (see Arts. 50, 51); or (*d*) in case of the alienation of lands by their guardians or trustees except by judic al permission (see Arts. 52, 53); (*e*) in the case of alienation by a third party or a joint holder without an order ad hoc from the owner (see Art. 43), the annulment can be allowed (*f*) in favour of third parties in consequence of an action claiming the land from the buyer, founded on a certain right of preference (*jus προτιμίας*) sanctioned by law : that is, in favour (1) of the joint holder (see Art. 41) or the joint holders (see Art. 42) (2) with the proprietor of the trees or buildings on the land possessed by others (see Art. 44);

(3) of the inhabitant of the same village (see Art. 45), but of the neighbour as such (Art. 46). B. The alienation may be annulled or decided (a) on account of deceit or fraud as to actionable defects (see Art. 119); (b) in the case of repurchase (*pactum de retrovendendo*)—that is, of a sale made by the debtor to his creditor in exchange or as security for his debt on condition of claiming the restitution of the land after the payment (see Arts 116–118 modified); (c) in case of non-payment of the price (see preceding Art. 38). As regards donations “*mortis causa*,” see Arts. 120, 121. As regards specially donations to foreign subjects, compare Arts. 4, 5 of the law granting to foreigners the right of holding landed property in the Ottoman Empire.

Second sale void. 79. Because, after a first, valid, and definitive sale, a second sale cannot but be considered as a sale of land belonging to another person (see Art. 43). As regards the Roman law, compare the Law 19, § 9, Dig. 19, 2; compare, however, the Laws 9, § 4, Dig. 6, 2, and 31, § 2, Dig. 19, 1. As regards French law, see Arts. 1583 and 1599, compared with the law on transcription of acts transferring property or real rights mentioned in Note 76.

Unauthorized dealings. 80. In accordance with the French Civil Code, according to which “the sale of a thing belonging to another is void, it can give rise to a claim of damages when the buyer has ignored that the thing belonged to another” (Art. 1599). Nevertheless, according to Roman law, “it is certain that one can alienate the things of another, because there is a buying and selling; but in this case the buyer may be deprived of the thing sold” (Lex 28, Dig. 18, 1), probably because the delivery made in virtue of such a sale, valid as a bare agreement, does not transmit to the buyer a property which the seller did not possess.

As regards the confirmation of the sale by the owner, compare the Law 38, § 1, Dig. 24, 1. See, however, the Law 9, § 2, Dig. 39, 5; Lex 3, Cod. 3, 32; Lex 4, Cod. 4, 51; Lex 12, § 4, Dig. 46, 3; Lex 60, Dig. 50, 17. As regards the case of an arbitrary sale by a joint owner, the buyer evicted from the portion of the land belonging to the co-proprietor had a right of action for damages against the seller.

“If, being older than 25 years” (says a rescript of the Emperors Diocletian and Maximianus), “you have sold as your own property

lands which were joint property with your brothers, to an individual who was ignorant of it, although you may have made no document, or that you have not specially agreed to anything in this respect, your purchaser having been evicted from a part of the lands sold, you owe him a compensation relative to the interest he had not to be so" (*Lex flu., de communium rerum alienatione, C. d. 4, 52*). As to the case of tacit acknowledgment of the sale by the joint proprietor, the Law 12, Dig. 21, 2, gives an example: "An heir appointed to one-half has sold all the hereditary property, and his joint-heirs have received the price of it. The purchasers have all been evicted. It was asked whether the joint heirs of the seller could be sued for the purchase. I replied" (says the Jurisconsult Scævola) "that, if the joint heirs had been present and did not dissent (*si præsentes adfuerunt nec dissenserunt*), each of them was considered to have sold his portion." As regards acts recognizing expressly or tacitly a sale null by French law, compare Arts. 1337-1340, 1988, and 1998 of the Civil Code. Compare at the end the Tapu Law.

81. See notes 78 and 83.

82. See notes 78 and 83.

83. Besides the right of preference (*jus προτιμήσεως*) about a voluntary sale made by the owner (Arts. 41-42, 44, 45, and note 78), there is also another category of right of preference for the acquisition of land in the case of death of the owner without legitimate heirs; that is, the *jus protimeseos* of parents and other persons, about which compare Art. 59 modified. In the Roman law, except in the case of a clause of a right of conventional preference, such a *jus προτιμήσεως* is also sanctioned by virtue of a disposition of the law in favour of the proprietor in the case of a sale of the right of emphyteusis, and in favour of other persons in different other cases, regarding whom compare the Law 3, Cod. 4, 66, 16; Dig. 42, 5, 60; Dig. 2, 14; 1 Cod. 11, 6; 14 Cod. 4, 38. As regards the right of preference of the neighbour to land (*mulk*) according to the common Ottoman law, compare above, Art. 2, page 2. The rights of preference of the Ottoman rights correspond exactly to various kinds of *Näherrechts* (or *Retractsrechts*, *Einstandesrechts*) of German law. According to the particular legislation which governs immovable property in the various States of the German Empire, it is established in favour of the joint

Unauthorized
dealings with
land.

No pre-emption by
adjacent
owner.

owner, of the neighbour, of the parish, or of the inhabitant of the same commune, of the near relation, &c., a right, in virtue of which they can attack the sale made by their joint proprietor, neighbour, &c., with a third party, and after the delivery of the land take it from the hands of the buyer on paying the price. Thus then (1) the *jus προτιμήσεως* of the joint owner corresponds to "retractus ex jure condominii" (Retrakt auf Grund des Mit-eigenthums), withdrawal on account of joint property; (2) the right of the inhabitant of the same commune corresponds to "retractus ex jure incolatus" (Marklösung Bürgerretract); (3) the right of the neighbour which is in force only as regards Mulks corresponds to "retractus ex jure vicinatus" (Nachbarlösung, Nachbarrecht) of German law on the one hand, and the Greco-Roman law on the other; (4) the right of the parents can in some way correspond to the Erblösung of the German law. But we must observe that the prerogative rights of an ancient epoch have been abolished in certain States on account of the obstacle which they opposed to the security of transactions concerning immovable property.

84. See below, Art. 131.

Mistake as
to area.

85. According to Roman law, if an individual has sold a field which he declared contained 18 acres (*jugera*), stipulating a price for each measured acre, he must pay for twenty if there be twenty (Lex 40, § 2, Dig. 18, 1). But if the measure of the field be less, the seller is bound as to the number of the acres; for, since there is a deficit in the measure, it is not possible to estimate the quality of the land which is missing. But not only can one act against the seller where the measure of the whole field is short, but one can also sue him for the parts, as, for example, if it has been said that there were so many acres of vines or of olive trees, and there is less of them. That is why, in this case, as regards the quality of the ground, they will estimate what is missing according to what exists (Lex 4, § 1, Dig. 19, 1).

Thus then, as regards the estimation of the deficit in the measure, they examine the price at which each declared acre was sold, and they give the same price to each of those that are missing (Lex 69, § 6, Dig. 21, 2).

(B.) According to the French Civil Code, "The seller is bound to deliver the extent such as is mentioned in the contract" (Art.

1616). Thus, "if the sale of an immovable has been made with an indication of its measurement at so much the measure, the seller is obliged to deliver to the buyer, if he require it, the quantity indicated in the contract; and if he cannot do it, or if the buyer does not demand it, the seller is obliged to suffer a proportional diminution of the price" (Art. 1617); "but if, on the contrary, there is a larger extent than that stated in the contract, the buyer has the choice of giving the supplement of the price, or to break the contract if the excess is one-twentieth above the declared contents" (Art. 1618).

Mistake as to area.

86. A. According to Roman law in this case, the seller not only cannot retain what is found to be more than he had declared, but he is also obliged to guarantee it to the buyer in case of eviction from that part. He who in selling a piece of land of 100 acres has given boundaries more extended to the buyer (*finis multo amplius emptori demonstraverat*), if the purchaser were evicted from part of these limits, he must indemnify him for it according to the value of that part, even when the hundred acres which he may have purchased remained in his hands (*Lex 45, Dig. 21, 2*; compare also *Lex 38 pr., Dig. 19, 1*). B. According to the French Civil Code, except in the case mentioned in the preceding note, in all the other cases—whether the sale be for a certain and limited quantity, whether it have for its object separate and distinct properties, whether it commences by the measure, or by the designation of the object sold followed by the measure, the naming this measure gives no cause for any increase of price in favour of the seller for the excess of measure, nor in favour of the purchaser for any diminution of the price for the deficient measure, except inasmuch as the difference of the real measure from that mentioned in the contract is one-twentieth more or less, having regard to the value of the totality of the objects sold, if there be no contrary stipulation (Art. 1619). However, in this case of augmentation of price "the purchaser has the choice of withdrawing from the contract or of paying the supplementary price, and this with interest if he has kept the immovable" (Art. 1620). With regard to actions to this effect which "must be taken in one year from the date of the contract under pain of forfeiture," see Art. 1622 (compare also Art. 1621). As regards the sale of two grounds by the same contract for one and the same price, compare, as regards Roman

Actions as to mistake in area.

Law, the Law 42, Dig. 19, 1; and as regards French law, Art. 1623 of the Civil Code.

Timber,
&c.

87. "Ratio enim non permittit ut alterius arbor esse intelligatur, quam cujus in fundum radices egisset" (§ 31, Inst. 2, 1; French Civil Code, Art. 551; and note 54 and Art. 28). Thus "fundi nihil est, nisi quod terra se tenet"—nothing forms part of a piece of land but what holds to the piece of land (Lex 17 pr., Dig. 19, 1); it is thus that worked timber (ligna) belongs to the seller because it does not form part of the ground, although it may have been worked to be employed in it (Lex 17, § 2, eod.). The props for the vine do not form part of it until they are used (Lex 17, § 11, eod.). Nevertheless, it is asked whether, in case the seller and buyer have contracted when the buyer had not seen the land, the object of their contract, the seller is bound to deliver to him the trees which have been blown down since then by a hurricane.

It is replied that he was not obliged to do it, the buyer not having purchased them, since they had ceased to form part of the land before the contract; but if the buyer was ignorant of the trees having been blown down, and that the seller knew it, but had not informed him of it, there was reason to estimate whether the thing was part of the sale (Lex 9, Dig. 18, 6). According to the French Code, the obligation to deliver the thing includes its accessories, and everything destined to its perpetual use (Art. 1615). Thus, "the thing must be delivered in the state in which it was at the moment of the sale." From that day all the profit belongs to the buyer (Art. 1614).

Ownership
of trees.

88. "Quintus Mucius scribit: dominus fundi de prædio arbores stantes vendiderat et pro his rebus pecuniam accepit et tradere nolebat; emptor quærebat, quid se facere deberet, et verebatur, ne hæ arbores ejus non videretur factæ. Pomponius: arborum, quæ in fundo continentur, non est separatim corpus a fundo et ideo ut dominus suas specialiter arbores vindicare emptor non poterit; sed exempto habet actionem" (Lex 40, Dig. 19, 1). As for what is relative: (1) Trees become mulk; that is, entire property of the owner of the land (compare Arts. 25, 26, 29). (2) As regards the sale of these, Art. 49; and (3) as regards the right of preference to land to be sold, Art. 44.

89. See the preceding note in fine.

90. According to the Roman law, "pupillus vendendo sine

tutoris auctoritate non obligatur" (Lex 5, § 1, Dig. 26, 8), "quia sine tutoris auctoritate nihil alienare potest" (Lex 9 pr., eod.). Also minors in general cannot, without the consent of their trustees, conclude any agreement of sale (Lex 3, Cod. 2, 22). As regards insane and imbecile: "furiosum sive stipuletur, sive promittat, nihil agere natura manifestum est" (Lex 1, § 12, Dig. 44, 7), because "furiosus nullum negotium gerere potest, quia non intelligit quid agit" (8 Inst. 3, 19). Compare also Lex 5, Dig. 50, 17; Lex 1, § 3; Lex 18, § 1, Dig. 41, 2; Lex 1, § 12, Dig. 47, 7. According to French law, "the incapable of contracting are minors and the interdicted" (Civil Code, Arts. 1124, 1125); that is, those who, on account of their habitual state of imbecility, of insanity and mania, are judicially prohibited from administering their property or the exercise of their rights (Arts. 489, 512). As to those who are not declared such by a Court, see Arts. 503-504 of the same code. The minor emancipated also cannot sell nor alienate his immovables without conforming to the prescribed forms for minors not emancipated (Art. 484). As regards specially the spendthrifts, according to the French Civil Code, they may be prohibited from alienating their property without the assistance of a council named by the Court (Arts. 513, 515). According to Roman law, "prodigo interdicatur bonorum suorum administratio," and thus "solent prætores vel præsides, si talem hominem invenerint, qui neque tempus neque finem expensarum habet, sed bona sua dilacerando et dissipando profudit, curatorem ei dare exemplo furiosi" (Lex 1 pr., Dig. 27, 10; compare also Lex 16, §§ 1-3).

91. "Pupillus sine tutoris auctoritate non obligatur nec in emendo, nisi locupletior factus est" (Lex 5, § 1, Dig. 26, 8). Without the authority of their guardians, those who have not attained the age of puberty cannot buy, because "in his causis ex quibus mutuae obligationes nascuntur, in emptionibus, venditionibus, locationibus, etc. Si tutoris auctoritas non interveniat, ipsi quidem qui cum his contrahunt obligantur, at invicem pupilli non obligantur" (pr. Inst. 1, 24). Compare also §§ 9, 10, Inst. 10, 19.

As regards the insane and imbecile, see the preceding note. See also the same note as regards minors according to the French Code. However, the emancipated minor may do all the acts which are not purely administrative (Art. 481). "As regards obligations which

Sale, &c.,
by infants,
lunatics,
&c.

Disabilities
of infants.

he may have contracted by purchases or otherwise, they may be diminished if excessive" (Art. 484).

Powers of
guardians,
&c.

92. But independently of the purchase of lands, the guardians may also lend the money of the minors at an exceptional interest, 15 per cent. per annum. (See the Imperial Firman on the uniform rate of interest and the modified law, *Lég. Ott.* Vol. I., Nos. 12, 13, pages 46 and 48, Art. 1.) According to Roman law, the guardian or trustee must deposit the money of the minor for the purchase of immovables: "*Si pecunia sit, quæ deponi possit, curare, ut deponatur ad prædiorum comparationem*" (Lex 3, § 2, Dig. 26, 7). "*Ita autem depositioni pecuniarum locus est, si ea summa corradit, id est colligi possit, ut comparari ager possit*" (Lex 5 pr., eod.), and only, if this become impracticable, he must lend it at interest (Lex 24, Cod. 5, 37; Lex 7, § 3; Lex 8; Lex 13, § 1; Lex 58, §§ 1, 3, Dig. 26, 7; Lex 3, Cod. 5, 56). Comp., however, *Novelle* 72, cap. 4 (d), but "*si post depositionem pecuniæ comparare prædia tutores neglexerunt, incipient in usuras conveniri*" (Lex 7, § 3, 7, 10; Lex 58, §§ 3, Dig. 26, 7).

In case the guardian or the trustee has bought in his name land with the money of the minor, this minor has an action to recover the land, "*si tutor vel curator pecunia ejus, cujus negotia administrat, prædia in nomen suum emerit, utilis actio ei, cujus pecunia fuit, datur ad rem vindicandam*" (Lex 2, Dig. 26, 9). According to the French Civil Code, "The family council will fix positively the amount at which will commence for the guardian the obligation to employ the excess of the revenue over and above the annual expenditure of the minor: this employment must be made within the delay of six months, after which the guardian will be debtor for the interest in case of non-employment" (Art. 455; see also Art. 456).

Disability
of guardian
or trustee.

93. According to Roman law, "the guardian may not buy the things of his ward, which is applicable also to other similar persons; that is, to trustees, attorneys, and other agents of the affairs of others" (Lex. 34, § 7, Dig. 18, 1); and this because in general "it is not allowed that he who administers a thing should buy it, neither himself nor by an intermediary, under pain of losing the thing purchased and paying four times the value of it (Lex 46, Dig. 18, 1), of which see the entire text in the note of Art. 88. And particularly the guardian may not buy, (a) nor by the medium of another person (Lex 5, § 3, eod.); (b) nor by the medium of a

person who is under him (§ 6, eod.); (c) nor through his wife (Lex 5, Cod. 4, 38). However, with the authorisation of his joint guardian he may buy *bonâ fide* and *palam* (Lex 5, §§ 2 and 4, Dig. 26, 8), or in case of a sale by auction (Lex 2, § 8, Dig. 41, 4; Lex. 5, Cod. 4, 38), but that only if the sale takes place according to law (see the following note). According to French law, "the guardian can neither buy the lands of the minor nor farm them, unless the family council has authorised the second guardian to let them to him" (Art. 450 of the Civil Code). But the guardian not only may not buy the lands of the minor, but also may not sell them without being authorised, either by the family council according to French law, or by the judicial authority according to Roman law, as is seen in the following note.

94. A. Roman law. Any alienation of the lands of a minor by his guardian or trustee cannot be valid without the permission of the judicial authority, granted only in case of necessity. (a) In the origin judicial permission was necessary only for the alienation of the *prædia rustica* or *suburbana*: "*imperatoris Severi oratione prohibiti sunt tutores et curatores prædia rustica vel suburbana distrahere*" (Lex 1, Dig. 27, 9); but this authorisation was to be granted only for the payment of a debt of the minor, who "*ex rebus ceteris non possit exsolvi*" (Lex 2, eod.). However, the prohibition has been extended (b) by the law of real rights, "*si jus ἐμφυτευτικὸν vel ἐμβατευτικὸν habeat pupillus videamus an distrahi hoc a tutoribus possit: et magis est non posse, quamvis jus prædii potius sit*" (Lex 3, § 4, eod.); compare also the Laws 3, § 6, and 4, § 5 eod. And at the last (c) by the Imperial legislation on all kinds of property. The permission then of the judicial authority, even according to the Imperial legislation, can be granted under pain of invalidity only in a case of necessity (*necessitas*), but not for a case of utility (compare the Laws 22 and 25, Cod. 5, 37), and after a careful examination of the case, "*causa cognita præses provinciæ debet id permittere*" (Lex 11, Dig. 27, 9; compare also the Laws 5, §§ 9–11, eod. 6 and 12, Cod. 5, 71). This examination of the reasons is also necessary in the case of alienation of the property of the *furiosi* or of the *prodigi* with respect to whom the same principles are in force: "*Præses provinciæ idem servari oportet, et si furiosi vel prodigi vel cujuscumque alterius prædia curatores velint distrahere*" (Lex 11, Dig. 27, 9). The judicial

Trustee cannot buy (Rule of *Keech v. Sandford*).

No sale of land of infant without leave of Court.

authorisation is indispensable only exceptionally in the case of the fulfilment of an obligation transmitted by inheritance to the minor (Lex 5, §§ 6, 7, Dig. 27, 9), but all alienation, even that done conformably to the laws, can be questioned by the minor on the ground of damage by means of the restitution in integrum during four following years after his coming of age; disposition, however contrary to Article 52 of the Code in question, which confirms the unimpeachability of the sale (compare Lex 2, 3, 5; Cod. 2, 25; Lex 11, Cod. 5, 71; Lex 4, 5, Cod. 2, 27; Lex 29 pr.; Lex 47 pr., Dig. 4, 4; and for prescription quadriennium, Lex 7, Cod. 2, 53).

B. French law. The guardian, even the father or the mother, cannot alienate or hypothecate the immovable property without being authorised to do it by a family council. This authorisation must not be granted but for a case of necessity, or for evident advantage. In the first case, the family council will grant its authorisation only after it has been proved, by a summary account presented by the guardian, that the last movable effects and the income of the minor are insufficient.

The family council will point out in all cases the immovables that must in preference be sold, and all the conditions which it may consider useful (Art. 457 of the Civil Code). But "the deliberations of the family council relative to this object will be put into execution only after the guardian has asked for and obtained the approval of it by the tribunal of first instance" (Art. 458). With regard to the procedure to be followed for the approval of the deliberation, compare Arts. 882-889 of the Civil Procedure; and with regard to the public sale by auction of the immovables, compare Art. 459 of the Civil Code. The alienation of the immovables of interdicts and of emancipated minors is governed by the same conditions. The emancipated minor "could not alienate his immovables without observing the forms prescribed for the minor not emancipated" (Art. 484 of the Civil Code). The interdict is assimilated to the minor as regards his person and his landed property; the laws of the guardianship of minors are to be applicable to the guardianship of interdicts (Art. 509 of the same Code). "The same authorisation of the family council will be necessary to bring about a division" (Art. 465). As to the procedure to be followed, compare Art. 460 of the same Code, and note 42; see also the following note.

95. A. Chiftliks of minors. As regards the general management and the letting or the sale by public auction of Chiftliks belonging to minors—that is, property consisting of buildings, cattle, beasts of burden, vines and other property, and domains to which they belong—see Chap. III., Arts. 31–33, of the Tapu Law. Management, letting, sale, &c., of infants' property.

B. Landed property of minors domiciled in Crete. As regards exceptionally the superintendence by the respective Demoyeronotes of the management of the property of the Christians or Mussulmans of the island of Crete who are under guardians or trustees, see the judicial regulations of the vilayet of Crete, Arts. 70, 71, classed in the third section of public law.

C. Legislation relative to minors in general, Arts. 18, 20, 50–53, 61, 63, 65, 76; and Arts. 31–33 of the said Law. The chapter about sales being finished, it must be observed (1) that, as regards the sale of land granted to colonists, it is necessary to compare Art. 8 of the special law ad hoc (Lég. Ott. Vol. I., No. 6, page 17); (2) as regards the alienation of vakf lands held by ijaretein, to Law No. 19, Arts. 4, 15, 17, 18, 20–22, and 26–29.

96. The provisions of Chapters III. and IV. relative to the hereditary transmission, and to the vacancy or escheat of Mirié lands, have been essentially modified by the law “relative to the extension of the right of inheritance to landed property called Mirié and Mevkufé, dated the 17th Muharem, 1284 (21st May, 1867), of which the entire text will be found at page 158, and the provisions relative to the right of inheritance in the note 100. As regards the application of the present code relative to Christian estates, compare the Vezirial order “on the Inventory of Christian Estates” (Lég. Ott. Vol. I., No. 11, page 43). Devolution by inheritance.

97. Literally, under his care, given to him on certain conditions. The term indicates rather the enjoyment usufructuary than patrimonial, that which constitutes mulk, freehold (Belin). Death of owner.

98. As regards estates bestowed on posterity, compare with the Roman law La Nouvelle 118, Chap. I., and with the French law Arts. 731 and 745 of the Civil Code; and as regards the estates of adopting fathers, Art. 350. Descent to child.

99. According to Roman law, “antiqui libero ventri ita prospexerunt ut in tempus nascendi omnia ei jura integra reservarent” Child en ventre sa mère.

(Lex 3 pr., Dig. 5, 4). As for "cura bonorum ventris nomine," compare Lex 1, § 4, Dig. 50, 4; Lex 1, §§ 2, 42, 7; Lex 8, Dig. 27, 10; Lex 1, §§ 17-26; Lex 5, Dig. 37, 9; in the same manner for the trustee to the unborn, compare Art. 393 of the French Civil Code.

Descent
upon
parents
upon
failure of
children
and grand-
children.

100. In consequence of the law on the extension of the right of inheritance mentioned in note 96, the order of succession to lands Mirié and Mevkufé established by the Law has been modified in the following manner:—

"Art. 1. The provisions of the Land Law are maintained which establish the right of succession in favour of the children of both sexes, in equal portions, to lands Mirié and Mevkufé.

"On failure of children of the one or the other sex the succession to these lands will fall to the heirs of the subsequent degrees, in equal shares and without any obligation in return, namely—

"2nd Degree. To the grandchildren; that is, to the sons and daughters of the children of the first degree of both sexes.

"3rd Degree. To the father and the mother.

"4th Degree. To the brothers german, and to the brothers consanguineous.

"5th Degree. To the sisters german, and to the sisters consanguineous.

"6th Degree. To the brothers uterine.

"7th Degree. To the sisters uterine.

"On failure of heirs, to the undermentioned degrees:—

"8th Degree. To the surviving husband or the surviving wife.

"Art. 2. The heir within one of the degrees established above excludes all the heirs belonging to the subsequent degrees. For example, the grandchildren cannot inherit the lands if there be children, and the father and the mother will be equally excluded from the inheritance by the grandchildren existing, and thus for the others.

"But the children of the sons and daughters pre-deceased being in the place of the said sons and daughters, will inherit by right of representation the portion falling to their father and mother pre-deceased from the estate of their grandfather and their grandmother. But the surviving husband or wife will have a right to part of the inheritance of the lands transmitted by succession to the heirs of all the degrees from the 3rd degree (succession from the father and

mother) inclusive to the 7th degree (succession of the uterine sisters) inclusively."

With respect to Roman law, compare (a) relative to the successions falling—1st, to the ascendants of the deceased, to the brothers and sisters consanguineous, and to the children of the brothers and sisters pre-deceased (Novelle, 118, Chaps. II., III. pr., and Novelle, 127, Chap. I.); 2nd, to the uterine brothers and sisters, and to the children of the brothers and sisters pre-deceased (Novelle, 118, Chap. III.); 3rd, to the other relations, preferring the nearest (Novelle, 118, Chap. III., § 1). (b) As regards unusual estates—(1) of the poor widow (Novelle, 53, Chap. VI., Novelle 117, Chap. V.); (2) of the young person of full age emancipated by the adopting father without any reason—that is, "*la quarta Divi Pii*" (§ 3, Inst. 1, 11; Lex 22 pr., Dig. 1, 7; Lex 2, Cod. 8, 48; Lex 13 pr., Dig. 38, 5). As regards French law, compare (a) as regards estates falling to the ascendants, Civil Code, Arts. 746-749; and to collateral estates (Arts. 750-755). (b) Relative to irregular successions—(1) of natural children (Arts. 756-766); (2) of the surviving husband or wife and the State (Arts. 767-773). (c) As regards the right of representation, *jus representationis* (Arts. 739-744).

101. According to the common civil law, or Mussulman religious law, when on the opening of a succession one of the heirs is absent and that from his disappearance there has elapsed, without having had any news of him, a space of time equal to the probable limits of human life, this heir is considered as uncertain, and consequently excluded from the estate. But in case the amount of time elapsed leaves some doubt on the existence of the absent, his part of the inheritance is reserved—calculated according to certain rules—and the definitive division is suspended until there is reason to pronounce that he is either dead or alive (Solvét, '*Mussulman Estates*,' page 7). According to French Civil Law, if a succession is opened to which an individual, whose existence is not recognised, is called, it will fall exclusively to those with whom he would have had the right to compete, or to those who would have received it in his absence (Art. 136 of the Civil Code). See the following note.

102. According to the French Civil Code, the provisions of the Art. 136 (mentioned in the preceding note in fine) will have force

Right of absent child. without prejudice to actions by petition of hereditary right and other rights which belong to the absent, or his representatives, or attorneys, and which will not be extinguished by the lapse of time established for prescription (Art. 137).

Right of children of absent owner. 103. The order of succeeding to this absent possessor, who is presumed to be dead, has also been modified by the law cited in note 100. As to the meaning of absentee whose existence or decease is unknown, according to Mussulman law in general, compare note 101 relative to the absent heir. As regards French law, compare Arts. 112-143 of the Civil Code, and specially Arts. 115, 120.

Privilege of soldier. 104. According to the Law 3, Cod. 2, 50, "*quod tempore militiæ de bonis alicujus possessum ab aliquo est posteaquam is reipublicæ causa abesse desiit, intra annum utilem, amota prescriptione temporis medii possessionem vindicare permissum est; ultra autem jus possessoris lædere contra eum institutum non oportet;*" and according to the Law, 4 Cod., "*venditionem autem in id tempus differri, quo reipublicæ causa abesse desierint.*" (Legislation relative to Soldiers, Arts. 59, § 9, 67 and 73.)

105. See notes 96 and 100, and the note following 106.

Right of owner of Mulk trees or build-ings. 106. The right of preference to Tapu of collateral relations, and of the wife of the deceased, which, as we have already observed, has a certain affinity to the Erblösung of the German law (see note 83), has been abolished by the law cited in note 100. in virtue of which a right of inheriting the lands Mirié and Mevkufé of the deceased, following the order established by the said law, has been granted in their favour.

Preferential right of joint tenant. 107. As regards the right of preference of the joint holder in the case of the sale of the common land by the joint holder, see above, Arts. 41, 42, and notes 78, 83, and 112; legislation relative to communio possessionis, Arts. 15-19, 35, 41-43, and the Art. in question, 59, § 8.

108. In regard to the right of preference of the inhabitants of

the same district (commune) in the case of the sale of the land situated in the commune, see Art. 45, and notes 78, 83, and 112.

Finality of award.

109. On account of the extension of the right of inheritance we may complete the expression of the text as follows: "nor other persons called to inherit according to the order established by the law ad hoc" (see note 100).

Failure of persons having right of Tapu.

110. As regards the right of the State to unclaimed estates, or rather the return to the State of the right of possession as owner, compare note 10 and Art. 2, page 2.

Extent.

111. Consequently they can demand restitution in integrum of this loss of their right, and thus exercise their rights of preference against the purchaser of the land, but, however, within the time fixed for the bringing forward the claim, as is seen in the article and the following: Legislation relative to Minors, Arts. 18, 20, 50-53, 60, 61, 63, 65, 76; and Tapu Law, Arts. 31-33.

Preservation of rights of person under disability.

112. The provisions of the Art. 61 in fine, in virtue of which the prescription of the action for restitution is not suspended during the state of minority, madness, imbecility, and absence, exceptional provisions, and contrary, besides, to the principle established by the same code in favour of minors and others prohibited (Arts. 20, 52, 76), is, however, in accordance with German law, according to which the minor cannot demand restitution on account of neglecting to exercise the right of preference in the sale (Retractsrechts) within the time fixed by the law. "The principles which are in force about the prescription of suits (says a decree of the Supreme Court of Appeal of Celle of the year 1852) finds no application of the delay of a year and a day fixed for announcing the right of claiming restitution, which is foreign to Roman law. Consequently he who has the right of preference cannot make use of the privileges granted to the minor relative to prescription, because the delay fixed for bringing the action for restitution (Retractsklage) is in force also against the minor without his being able to obtain a restitution from neglecting this delay (see Seuffert, 'Archiv für Entscheidungen der obersten Gerichte in den deutschen Staaten,' Band 7, No. 82). It must also be observed that the Retractsklage, the action to claim restitution of the German law, that is, the one within whose

Period for asserting right of Tapu.

denomination are included all the special actions by which one may avail of the different kinds of right of preference to a sale (note 83), "is a real action (*dingliche Klage*), according to the opinion of the plurality of authors, whilst others consider it as an *actio in rem scripta*." (See Lewis on the word "*Näherrecht*" in the '*Encyclopädie der Rechtswissenschaft*' of Dr. von Holtzendorff.) The Ottoman law adopts the opinion prevalent in Germany, in admitting the action for restitution against the holder of all land sold. (See the Art. mentioned in the note 78, 1-3, and the Art. in question, 61.) As regards the collision of the rights of preference put forward by different persons to the same property, according to German law, "when several having a right of preference bring forward at the same time their claim, if their actions are based on the same kind of right of preference, in the case of *Erblösung* (that is, the right of relations), the nearest relation is preferred to the most distant, and in the other kinds prejudice, and finally lottery, decides (Lewis, *cod.*). The Ottoman law established also the right of preference of the nearest relations, according to the order laid down in Art. 59, §§ 1-7, but, as has been said above (note 100), their rights have been replaced by the succession law. As for by lot, it is established as regards the inhabitants of the same commune (see Art. 69, § 9). Thus the collision of rights can take place in other cases, regarding which the law has established no order among the different kinds of right of preference.

Forfeiture
of right to
Tapu.

113. The provisions of Art. 62 are not applicable to collaterals in consequence of the law of succession (note 100), but only to the others having a right.

Sale sub-
ject to
rights of
infants, &c.

114. Because their guardians and trustees by Art. 65 may purchase land by the tax of Tapu, if it be advantageous. See also the preceding note. (Legislation relative to Minors; compare note 111 in fine.)

115. As regards the degrees 1-7 of the Art., modified 59, compare the note.

116. In conformity with the German law, according to which "the right of preference cannot be availed of but by him who alone has the right in favour of himself. It is, therefore, neither alienable by cession, nor transmissible by inheritance to his heirs."

(See Lewis in the 'Encyclopædie' mentioned above, in the note 112, eod.)

Degrees of persons entitled.

117. Compare also Art. 51 and note 111, as regards the Art. relative to minors.

118. Compare also Art. 44 as regards the right of preference. (Legislation relative to Trees and Buildings become Mulk, Arts. 25, 26, 29, 44, 59, § 7, 66, 81-83, 90).

119. Provisions relative to soldiers (Arts. 58, 59, §§ 9, 67 and 73). Compare, however, note 104.

120. See Art. 11 and note 30.

121. See Art. 69 and note.

122. According to Roman law, the emphyteuta may be deprived of the right of having a long lease -- (1) in the case of deterioration of the land (Nov. 120, chap. viii., Cod. 1, 2), which is applied also to the letting of the land (Lex 3, Cod. 4, 65); and (2) in the case of non-payment of the rent to the owner, or of the taxes during three years, "sin per totum triennium neque pecunias solverit neque apochas domino tributorum reddiderit" (Lex 2, Cod. 4, 66). Compare, however, the chapter 58 of Book xi., Cod. de omni agro deserto, and the following note. As regards the cessation of the right of usufructus with respect to the usufructuary, according to the Roman law and the French law, in the case of deterioration, compare note 7. As regards the legislation relative to the loss of the right of possession on account of no revenue, see Arts. 69-76.

Disposal of untitled land.

123. "Si vacanti ac destituto solo novus cultor insederit ac vetus dominus intra biennium eadem ad suum jus voluerit revocare, restitutis premitus, quæ expensa constiterit, facultatem loci proprii consequatur. Nam si biennii fuerit tempus emensum, omne possessionis et dominii carebit jure, qui siluit" (Lex 8, Cod. 11, 58).

Recovery of lost lands.

124. In conformity to the Roman laws, according to which "inundation does not change the nature of the land, and therefore, when the waters have retired, it is indubitable that the land belongs to him to whom it belonged" (Lex 6, Dig. 41, 1). In the same way, "Alluvio agrum restituit eum, quem impetus fluminis totum abstulit, itaque si ager, qui inter viam publicam et flumen fuit, inundatione fluminis occupatus esset, sive paulatim occupatus est sive non paulatim, sed eodem impetu recessu fluminis restitutus ad

Right of owner to flooded land.

pristinum dominium pertinet; flumina enim censitorum vice funguntur, ut ex privato, in publicum addicant, et ex publico in privatum: itaque sicuti hic fundus cum alveus fluminis factus esset, fuisset publicus, ita nunc privatus ejus esse debet, cujus antea fuit" (Lex 3, Dig. eod). As regards French law with respect to the right of alluvion, compare Arts. 556-563; and especially for the case in question, Arts. 557, 558, and 563.

125. As regards collaterals who are already heirs, see the notes 100 and 106.

126. As regards collaterals, see the preceding note.

Privilege
of soldier.

127. In the note 104 the Law 3, Code 2, 50, has been mentioned, according to which, "it is allowable during one year to a soldier after his return to claim those lands which another has in his power, and his claim cannot be opposed by the possession of them during that time." To complete what has already been said about soldiers according to Roman law, it must be added—(1) that by the Law 17, Dig. 4, 6, "One must assist a soldier, not only against the possessor of an inheritance which belongs to him, but also against those who have bought something of it, so that by appearing as heir he can claim the hereditary effects even sold." (2) That the term of this restitution in totality (restitutio in integrum), which, according to the law of the Pandects agreed with the year which has been modified by the Emperor Constantine, and finally by Justinian, who fixed as such four consecutive years without distinction of place or person (Lex 7, Cod. 2, 52 or 53), "quadriennium continuum." See also, as regards minors, note 94 (A), page 98. (3) That the prætorian edict, in virtue of which the restitution could be demanded, being drawn up in these terms, "if anyone has sustained injury or damage to his property whilst he was absent in good faith for the service of the republic (reipublicæ causa abesset)" (Lex 1, § 1, Dig. 4, 6), all the military who cannot leave their flag without danger are considered absent for the service of the republic (Lex 45, Dig. 4, 6), and for that the military man on leave and at home is not looked upon as absent "for the service of the republic" (Lex 34, eod.; Lex 1, Dig. 49, 16). However, "a soldier on leave is considered absent whilst he is going home or coming from it, but he ceases to be so whilst he is at home" (Lex 35, § 9, Dig. 4, 6). Compare also Lex 8, Cod. 2, 50 or 51).

(4) Except the combatants abroad and in the ranks "the Emperor Antonine had decided that it was the same for the guards of the town," *urbanicanis militibus* (Lex 35, § 4, Dig. 4, 6). (5) The doctors of the army (*militum medici*) can also demand to have restitution for the same reason, because their functions are public and ought not to injure them (Lex 33, § 2, eod.). (6) Also, those who are sent to lead or to bring back soldiers, or to recruit (Lex 35, eod.); and, finally (7) The women who accompany their husbands, absent for the service of the republic, like those of the military (Lex 1, Cod. 31 or 52). (8) As regards the time during which they are supposed to be absent for the service of the State it is established as such, the time occupied by the function they exercise, but as soon as the absence for the service of the State has ceased a reasonable time is fixed for the return (Lex 38, § 1. Dig. 4, 6). It is for this reason that one is absent through bad faith when one does not return so soon as he might have done, and there is no cause for restitution on account of the damage suffered by his absence (Lex 4, eod.); but if one falls ill in returning, so that he cannot continue his journey, humanity requires that it be taken into consideration, as also to the season, to the difficulties of navigation, and other accidents which are imperative reasons for delay (Lex 38, § 1, in fine eod.). Compare also, as regards soldiers, Arts. 58, 59, § 9, and 67, and note 104.

128. With respect to absentees see Art. 56 and note 101; as regards absent owners who are presumed to be dead, Art. 57.

129. (A) According to Roman law, if the guardian or trustee does not manage the Estate, or does so improperly, of the minor, he can be compelled by the competent authority, "*strictioribus remediis adhibitis*," to fulfil his duty, and in case of non-obedience he may be replaced by another as suspected (Lex 3-5, Cod. 5, 43; Lex 3, § 5, 16-18; Lex 4, § 4; Lex 7, §§ 1, 3, Dig. 26-10). (B) Also, according to French law, those whose management show incapacity or infidelity may be dismissed from the guardianship (Civil Code, Art. 444, § 2; compare also Art. 450). As regards the letting Chiftliks belonging to minors in general, compare note 95.

130. (1) As regards specially the sale by public auction of lands

Disposal of lands escheated, &c. escheated to the State either from want of right to Tapu or from abandoning this right, sale, which must take place before the Administrative Council, and, with respect to lands measuring more than 500 hectares, before the Imperial Treasury in the Ministry of Finance, compare Arts. 17, 18 of the Tapu Law and the law of the Vilayets, Arts. 34, 48. (2) As regards the voluntary sale or alienation by the holder of lands of which the concession is confided to functionaries ad hoc of the finance in the departments and to the caimacams (administrative functionaries of every commune) compare Art. 88, and Art. 1 of the said law. (3) It must be observed here, what has been omitted in note 108, that § 9 of Art. 59, relative to the right to Tapu of the inhabitants of the same commune, has been modified by Art. 18 of the same law only as regards lands of great extent and the Chiftliks whose separation and division is injurious, and as regards which the right of preference on the acquisition of land is abolished, limited in this case only to the 8th degree, that is in favour 1st of the owner of the trees or buildings, when this person, being perhaps the heir according to the Common Civil Law (Art. 81) and not according to the exceptional order established by the law mentioned in note 100, has however inherited the said trees or buildings (Art. 59, § 7); and 2ndly, in favour of the joint holder (Art. 59, § 8), concerning whom see also Art. 11 of the Instructions about Tapu Title-deeds; 3rdly, as regards the right of parents, Art. 59, §§ 1-7, which has been altered by the law of succession (see note 106); 4thly, as regards the annulling or rescission of the definitive decision of the granting the right of possession (see note 140); 5thly as regards the offer about the purchase of land to those who have a right to Tapu before putting it up to auction (compare 4 and 15 of the said Regulations).

Prescriptive title.

131. (A) As regards the acquisition of the right of possession of the holder of the land by the right of Tapu against the true claimant (and not against the State, as it is stated in Art. 78), see, Art. 20; compare also Art. 8, of the Regulations about Tapu Title-deeds. (B) As regards Roman law, the usufruct may be acquired by Prescription of ten years for persons present, and twenty years between persons absent (see note 47); but, as regards the acquisition of *jus emphyteuticum* in *agro vectigali*, the doctrine of authors is not unanimous. According to some, the *emphyteusis* may be acquired

by usucapion whether there be no emphyteusis, so that the owner himself is the person who loses by the usucapion, whether the thing is already subject to an emphyteusis, so that it is the right of the Emphyteute of that time who is excluded by the usucapion (Windscheid, 'Pandektenrecht,' § 221). According to others the usucapion is quite inapplicable, or according to others it is admissible, the ordinary as well as the extraordinary, but only that which is translative and not constitutive of the right of emphyteusis (Puchta, 'Pandekten,' § 177); whilst according to others only the extraordinary is admitted, that is, that of forty years, which is established by law (14 Cod. 11, 61) in these terms:— "Jubemus omnes qui in quacumque provincia fundos patrimoniales, vel temporum et vel cujuscumque juris per quadraginta jugiter annos (possessione scilicet non solum eorum, qui nunc detinent verum etiam eorum qui antea possederant, computanda) ex quocumque titulo vel etiam sine titulo hactenus possederunt, vel postea per memoratum quadraginta annorum spatium possederint, nullam penitus super dominio memoratorum omnium fundorum vel locorum vel domorum a publico actionem vel molestiam aut quamlibet inquietudinem formidare," &c. As regards French law see a transitory law dated 20 May, 1836, "on usurped domainial lands." Prescriptive title.

132. See Art. 21 and note 48.

132 bis. In consequence of the extension of the right of inheritance to collaterals (note 100), it appears that the provisions of Art. 80 find no application.

133. Defter Khané, general depot of the ancient archives and registers of the Cadastre relative to the lands of the State. (Compare D'Ohsson, 'Tableaux de l'Empire Ottoman,' T. VII., page 193.) Definition of Defter Khané.

134. With regard to this right of property (Mulk) of the trees or buildings on State lands, held either by the same owner of the trees or buildings, or by another owner, it remains to observe that the provisions relative to them have great affinity with the "jus superficies" of the Roman law, according to which "the right of superficies is based on the idea that an edifice or other establishment which is placed on land belongs to some one without the soil or the Mulk of trees, &c., on State lands.

ground, "si solum sit alterius, superficies alterius" (Lex 9, § 4, Dig. 39, 2; Lex 74, Dig. 6, 1), "qui in alieno loco superficiem . . . habet" (Lex 1, § Dig. 43, 18). Compare Windscheid, 'Pandektenrecht,' § 223; but if it be said that besides the edifices, other erections may also be the object of the right of superficies, there must be included not only structures that may be built (bauliche anlagen), for example, a wall, an aqueduct, but also trees and other plantations (Windscheid, eod. § 223 in fine). The right, then, of the owner of the ground, which, by the permission of the competent authority which represents the State as proprietor, has planted fruit-bearing trees (Art. 25), or non-bearing fruit (Art. 29), or has erected buildings (Art. 31), or has grafted or raised trees grown naturally on the land (Art. 26), or has already acquired property, in vines or fruit trees, planted by him without the permission of the authority by prescription of three years (Art. 25), and which right of the owner becomes thus a right of property in the said buildings or plantations, alienable separately (Art. 48), and transmissible by inheritance as Mulk to his heirs according to common law (Art. 59, § 7, and Art. 81): it is nothing but a right of superficies on the land of another, that is, another real right on the soil of the State, which is the proprietor of it. It is true that, in Roman law, the establishment superficial is not considered as the real property of the person having the right to the superficies (Lex 2, Dig. 43, 18; Lex 86, §§ 41, 30; Lex 19 pr.; Dig. 39, 2; Lex 49, Dig. 50, 16; Lex 10, Dig. 10, 2), on account of the impossibility in law of such a legal connection, because that which has a lasting connection with the land has no independent existence of itself, but is an essential part of the land, and consequently it cannot be the object of a special right, but is included necessarily in the legal connection which exists with the ground; so that the superficies is a right on the thing of another, of which the purport, however, is more extended than that of a simple *jus in re aliena* (see Windscheid, eod.), whilst in the Ottoman law the establishment on the superficies is expressly named freehold, "Mulk," full property. But if it be taken into consideration that after the total destruction of the establishments (plantations or buildings) the owner of these can only exceptionally have a right to the ground which remains (Arts. 82, 83, and note 136), from which it follows that he cannot rebuild nor plant again if he be not in one of the conditions

required by Arts. 82-83, 89-90, we must admit that even in the Ottoman law the denomination *Mulk* cannot totally deprive this right of the character of a *jus in re aliena*, nor quite break off the intimate connection which exists between the right of property of the State to the soil, and the right of the proprietor of the establishment as regards the same soil from which that depends, because that connection is based on the nature of the things. It may then be considered up to a certain point as an absolute right, more extensive than a simple *jus in re aliena*, whilst the right of possession of the land of the State is such from all points. Compare also notes 118 and 136.

Ownership
of trees,
buildings,
&c.

135. See the following note.

136. It is already said (note 134) that, according to the provisions relative to the rights of the proprietor of plantations or buildings, the right to these becomes full property (*Mulk*): (1) When the owner of the soil had planted or built them with the authorisation of the competent authority (Arts. 25, 29, 32): (2) When he has grafted or raised trees come up spontaneously (Art. 26); (3) When he has planted vines or fruit trees without authorisation, of which, however, he has acquired the ownership by the three years' prescription (Art. 25). But with regard to buildings on the one hand, and plantations of trees not fruit-bearing to make a wood on the other hand, done without authorisation, the law has made no prescription in favour of the holder. However, from comparing Arts. 29 and 31, 32, with the Arts. in question (82, 83), it follows that the right of the State on such construction, which he may pull down (Art. 31), or on such a wood cannot be exercised before the time of an alienation by the owner to a third party, or his decease, after such a transfer, either by inheritance or between living persons; it does not seem that the new owner can be dispossessed as regards the buildings or the trees. (See Arts. 49 and 81, compared with Arts. 82, 83, in fine, relative to the concession of the ground on which the buildings or plantations depend.) As to those made by the joint owner, or by a third party, compare Art. 35. As regards the loss of the right to the ground which remains after the ruin, on account of the continual non-payment of the *ijare-i-maktua* to the State, there must be compared the

Sites of
vineyards.

Restoration of buildings.

Arts. 84 and 85, and the note 138. As regards the Roman law relative to the right of rebuilding the ruined edifice: "when the building on the surface has perished, it must be taken into consideration whether it is not in accordance with the sense of the constitutive act that the owner of the superficies might rebuild the establishments" (Windscheid, '*Pandektenrecht*,' § 223; and Waechter, '*Das Superficiar oder Platzrecht*,' page 116). To finish the object in question it only remains to observe that right granted by the State to the owner of land to plant trees for the purpose of becoming their owner is practised also in some localities of Germany, where the commune grants the right to plant trees in communal pastures to a private person, so that the said trees will belong to him upon the payment of a trifling solarium (tax on the soil); this right of the individual is neither considered as a personal right—that is to say a right *ex obligatione*, which he cannot use against a third buyer of the soil—nor as a simple right of usufructus of the trees, which is extinguished by the death of him who planted them; but, on the contrary, it is considered as a superfiary right, because the intention of the parties was only to create a true superfiary right, because the intention of the parties was nothing more than the constitution of a true superficial right, and it is as such that it has been understood and recognised by the commune. (Waechter, *eod.* page 53, mentioned by Windscheid, *eod.* § 223, note 20.)

137. As regards lands *yaylak* or *kishlak*, see note 52 and Art. 25; compare also following Arts. and notes.

Vacant meadows.

138. As regards land remaining uncultivated during three following years, or exceptionally four, if there has been total or partial succession in the person of the owner, that is, hereditary transfer or alienation *inter vivos* without legal grounds, compare 68–76. As regards Roman law, it is already said that the *emphyteute* to whom is assimilated the owner of State land (*agri publici*) with the title of perpetual location, may be deprived of the right of *Emphyteuse*, excepting in the case of deterioration of the land; also in the case of non-payment of rent to the proprietor, or of taxes during three consecutive years. (See the note 122.)

139. Nevertheless, in the case of a damage by a fraudulent

valuation, the State may, during the ten years after the concession, Right to provoke the cancelling of the sale, if the buyer will not make up Tapu. the price. (See the following article in fine.)

140. Independently of the reasons which may cause in favour of Rights of the State the cancelling a definitive adjudication of a grant of land which, as is already said (note 130), must be made either by the Mejlis Idaré or by the Imperial Treasury in the Ministry of Finance, that is (a) on account of loss by the low price (Art. 87 in question), and (b) in the case of a purchase by a functionary whom the law prohibits from being a purchaser (Art. 88), the definitive adjudication may also be annulled or rescinded: (1) By an hereditary right brought forward by the heir (see note 100) claiming the inheritance, but only during three years after the decease of the owner (Art. 56, compared with Arts. 74, 75); (2) In favour of a minor or other interdict whose guardian or trustee has not put forward the right of preference belonging to these, or he has abandoned this right, but, however, within the term fixed by law for the exercise of the right in question, without any consideration for the minority, the state of insanity, or imbecility. (See Arts. 60, 61, 63, 65, and notes 111, 112.) (3) In favour of the soldier, either as heir (Art. 58 compared with the law cited in note 100), or as plaintiff for full restitution in all the other cases (Art. 73).

As for the others having right to Tapu, to whom the competent authority must make—as to all those having right to Tapu—an offer to purchase the land before it is put up to auction (See Art. 59, §§ 7–9, 60–62, 64, 66, 67, 77, compared with Arts. 16–18 of the Tapu Law), and especially Arts. 4 and 15 of the Regulations about Tapu title-deeds. According to French law, the sale may be rescinded in favour of the seller “if he has been injured by more than seven-twelfths in the price of an immovable” (Art. 1674 of the Civil Code), and in this case “the purchaser has the choice either of giving back the thing on receiving the price he has paid for it, or to keep the land on paying the rest of the just price, with a deduction of one-tenth of the total price” (Art. 1681). But “the rescission does not take place in all sales which, by law, can take place only by the authority of justice (judicial authority)” (Art. 1684). Also, in the Roman law the sale can be cancelled on account of *laesio enormis*, that is when the seller has received a

price less than half the real price (Lex 16, § 4, Dig. 4, 4; Lex 22, § 3; Lex 23, Dig. 19, 2; Lex 8, Cod. 4, 44, note 97, Chap. I.).

But at the sales made at public auction, as regards the question to know whether the adjudication can be attacked on account of *laesio enormis*, the jurisprudence of the supreme tribunals of the states of the German Empire in which Roman law is still in force, is divided in this respect as well as the opinions of authors. It is thus that the Supreme Courts of Stuttgart (1828 and 1845) and of Munich (1855) have established the unimpeachability of the adjudication on account of enormous injury, that is, the inadmissibility of the *rescisio ob laesionem ultra dimidium*, whilst the Supreme Court of Appeal of Jena (1841) and of Lübeck (1850), as well as the faculties of law of Heidelberg (1858) and of Berlin (1859) have established, on the contrary, the admissibility of the rescission. See 1, in favour of rescission, the judgments cited in the archives of Seuffert mentioned in note 112, vol. vi.; No. 323, xiii.; No. 224 and xx. No. 120. (2) Against the admissibility, the Judgments, iv., No. 213, 4; xi., No. 17.

Disability
of Tapu
officials
and their
relatives.

141. A. The prohibition of Art. 88 is in conformity with the spirit of the Ottoman legislation, which prohibits, under penalty, its public functionaries by whom the farming by auction of the public revenues is made, from becoming purchasers. Compare the laws respecting the farming by auction of the indirect taxes and Art. 88 of the Penal Code, Laws classed in the Public Law. See, however, also Art 238 of the Penal Code with regard to obstacles put forward to the freedom of auctions. As regards other authorities who take part in the sale by auction, see note 130. B. Roman law. According to the Law 46, Dig. 18, 1, "it is not allowed that he who administers a thing should buy it, neither by himself nor through the medium of another. Such a buyer is condemned to lose, not only the thing bought, but also four times the value, according to the law of Severus and Antonine, even if he were the Attorney of the Emperor, which never takes place, however, unless there be a contrary privilege. (See also note 93.) C. French law. The public officers of the national lands of which the sales are made through them cannot become purchasers, neither in person nor through the medium of third parties, on pain of invalidity (Art. 1596 of Civil Code).

142. Compare Arts. 82, 83, and note 136.

143. Compare also Arts. 82, 83, and note 136.

144. See Art. 1, § 4 : Art. 5, and notes 5, 21-22.

145. See the following note.

146. The forests of the Ottoman Empire being divided into four categories, that is, (1) forests belonging to the State; (2) those which appertain to the administration of the Evcaf.; (3) Communal Forests or Baltalyks; (4) woods and forests belonging to private individuals, all that concerns the last category having been treated in the Land Law, the provisions of the Forest Law have no application as regards the said woods and forests of private persons (Art. 1 of the said Regulations, mentioned in note 60). Nevertheless, the law in question contains also provisions relative to communal forests (Baltalyks), that is, those of the articles in question to which the said Forest Law refers, in the Arts. 21-26, of which here is the text :—

Art. 21. The Baltalyks are the forests which from all time have been appropriated to the parishes for their use and benefit.

Art. 22. In consequence, and in virtue of Arts. 91 and 92 of the Rural Code, the inhabitants of these parishes have alone the right to profit by them, to the exclusion of those of neighbouring parishes and all other individuals.

Art. 23. Private persons are prohibited from buying from a parish any portion whatsoever of the soil of a Baltalyk, or any number whatsoever of trees to profit by them standing. In a word, the alienation of any portion whatsoever of the ground or the surface is prohibited except for regular exploitation.

Art. 24. In lawsuits relative to Baltalyks it is prohibited by Art. 102 of the Rural Code to put forward the plea of prescription.

Art. 25. The inhabitants of a parish profit by their Baltalyk either individually or in common. The wood cut for a commercial purpose shall pay the tithe.

Art. 26. The inhabitants are bound to watch over the preservation of their Baltalyks. Instructions concerning the police of these forests will be published subsequently, and the agents of the public force will be bound to act jointly with the Mukhtars to carry them out.

To complete what has been said as regards woods and forests,

Inalien-
ability of
parish
forests.

belonging to each of these categories the following observations must be added.

A. Parish forests (Baltalyks). As is seen, the modifications made in the Law in question consist only—(1) In the prohibition that not only the State (Art. 92 of the Law) but not even the commune (*parish*) can alienate any portion whatsoever of the land or of the surface (Art. 23 of the Forest Law). As for the right of superficies on State land, to make a wood, see Art. 29 and note 134. (2) In the subjecting to Tithe wood cut down for commercial purposes (Art. 25), and this because, according to the statement of the reasons of the said Law, “they have the right to sell the wood produced by their Baltalyks.” As regards their right to profit by the domainal forests, see below (Forests of the State). (3) In the government superintendence, besides that of the inhabitants concerning the police of the forests, provisions which, according to the statement of the motives of the said Law, “have been taken to ensure the preservation of the communal forests.” As to the identical provisions of the Code and of the Regulations, as concerns (A) the enjoyment and the inalienability of the communal forests (Arts. 91–92 of the Code, 21–23 and 25 of the Regulations) see the notes 147, 149, and 152; and as regards the imprescriptibility, (Art. 24 of the Regulations) see Art. 102 of the Code and note 157. Compare also Art. 12 of the Regulations of the Mines.

B. Forests of the State. According to the statement of the reasons of the said Law, “as all the communes do not possess Baltalyks, and as besides they enjoyed long since the right to take gratuitously in the forests of the State all the wood necessary for their use,” it has been decided that the right of enjoyment should be given to them, but subjecting them to certain rules. It is thus that by the provisions of Art. 5 of the same Law, “the inhabitants of the communes will be authorised to take gratuitously in the forests of the State the wood for their use, such as for building and repairing their houses, barns, stables, carts, agricultural implements; also all the wood necessary for their household. Besides this, the wood and charcoal which they may transport by their carts and beasts of burden to be sold in the bazaar of their commune will also be given to them gratuitously.” But if it be a question of considerable quantities or of sales to take place outside the market above mentioned, they will be bound to pay a price.

"The inhabitants of the communes will be assimilated to traders and be bound to conform to the provisions of the Regulations of the Forests as regards the wood they wish to trade in. A special regulation, relative to the control to be exercised by the Administration about gratuitous deliveries will be ultimately promulgated." Also, according to Art. 17, "The inhabitants of the commune may be authorised by the forest agent to gather, without paying anything, dead wood lying in the forests of the State situated on the territory of their commune." But besides, the same inhabitants have also a right of pasturage for their beasts in these forests, regarding which see Arts. 13-16 and 43-45 of the same Law, and note 152. C. Forests of private individuals. It is already known that the provisions of Art. 28 of the Law, according to which the trees come spontaneously (on land *mirié*) can neither be cut down nor carried away by the owner of the soil nor by any one, because they belong to the State, has been annulled by Imperial ordinance (see note 60). However, according to the statement of the grounds for the Law in question, the State, in virtue of the said Art. 28, would have the right of using gratuitously the woods and forests depending on the domainal lands occupied by private persons. This right, however, has not been exercised hitherto, and the holders of the forests have continued to benefit by it exclusively. It is for this that the Regulations concerning the furnishing wood suited to the service of the marine and the artillery, although promulgated some days before the promulgation of the said ordinance, does not fix in favour of the State the right of servitude over the private forests, that is, to take wood for the service of the marine and the artillery, but exceptionally and with the condition that the trees to be taken must be at least two archines in circumference at one and a half archines from the ground. Trees existing in enclosed gardens as well as those situated round habitations are excepted from this bondage (Art. 11 of the said Regulations relative to the marine). But as regards those rare pieces that may have to be chosen, it is just, says the same report, "that the State should pay its value." It is thus that the valuation in money shall take place in the presence of the proprietor (Art. 15 of the said Regulations), and if the agents of the Forest Administration cannot agree with the owner about the price of the wood, experts (*khibres*) named by the

Communal
woods and
forests.

Repeal of
old law.

- local authorities will be appointed to fix it, and their decision must be accepted by the Forest Administration and the owner (Art. 16, eod.). As regards the observation of the said statement of reasons that the State shall have the right of cutting down trees in the forests of private persons, it must be observed that it makes allusion probably to forests created by trees growing spontaneously in the earth (Art. 28), and to woods descended from father to son or bought from third parties, held by Tapu (Art. 30), and not to forests created by trees planted by permission of the authorities which have become Mulk (Art. 29). However, after the abolition of the right of ownership by the State over teres come up spontaneously, there must be recognised always two kinds of private woods—the woods held by Tapu either as a dependence of the ground or as the principal object of possession (Art. 30), and the woods held as freehold (Mulk). The right of the State to take the trees necessary to the marine and the artillery includes without distinction all kinds of woods belonging to private individuals. With respect to the French legislation relative to the woods of private persons, compare Arts. 2 and 117–121 of the Forest Code.
- Private woods.** D. Forests of the Vacoufs. “These forests are assimilated to the lands dependent on the Evcaf., of which the revenues are expended in maintaining the foundations to which these lands are dedicated (Art. 19 of the Law). They have also been subjected to the same Law for their preservation; and, as regards the right of the State to take wood for the service of the marine, they have been subjected to the same regulations as the woods of private persons, with the exception only as to the restriction of the measure of the trees to be taken. (Compare the whole text of the said Law with the statement of the motives in the ‘Droit Administratif,’ Lég. Ott. Vol. II., under the title “Forests.”)
- Paramount right of State.**
- Forests of Vakfs.**
- Highways, &c.** 147. A. Mussulman law. The places belonging to no one and those belonging to all, as mosques, streets, public places, roads, &c., are used by each one, but no one can become their proprietor; so that when one leaves his place in such a place another can come and occupy it, and the first when he comes back has not the right to turn him out. Every one is, however, bound to make use of these things, so as not to impede the use of them by others, as for example, to sit in the middle of the road or the street, which

would interfere with the passage. (Tornauw, 'Droit Mussulman,' Highways Sect. 11, chap. iv., p. 286.) It is in virtue of this principle of common law of Mussulmans, similar also to other legislations, that the Ottoman law in particular (1) has laid down in Arts. 93, 94 and 192, the prohibition against all private property in public localities, their inalienability and imprescriptibility; and (2) has sanctioned these provisions by Art. 264 of the Penal Code, in virtue of which will be punished by imprisonment and a fine, those who may have injured the public roads, the places, the walks, or other places of public utility, or who have encroached on them in their length and breadth. The offenders shall also be condemned to pay the cost of repairs and to restore the ground encroached upon. Compare also Arts. 133 and 254 of the said Penal Code (Lég. Ott. Vol. II.), and the Regulations respecting Roads and Buildings, dated 25. Zilcadé, 1278 (Lég. Ott. Vol. III., Establishments and Institutions of Common Interest). B. Roman law. "The prætor prohibits the building in a public place and issues an interdict, that is, prohibits anything to be done in a place or public road" (Lex 1, Dig. 43, 8), and by this interdict the prætor takes care not only of the interest of the public, but also of that of private individuals; for the public places are destined to the use of private persons who use them, not as their private property but in virtue of the right of all; and each person has as much right to use them as he had to hinder us from doing it. This is why, if any one has made in a public road a work which does injury to a single individual, he can be prosecuted in virtue of this prohibitory interdict, and it is for this that it has been made (Lex 2, § 3, eod.). But by the denomination "publici loci" public places must be understood—the places, the islands, the fields, the roads, and the public roads (Lex 2, § 3, eod.), and in general "all the places destined to public use" (Lex 2, § 5, eod.). That this interdict is prohibitive, compare the Law 2, §§ 1, 10, 16–18, and the Law 7, Dig. eod. As regards the other interdict which prohibits doing anything in a public road which may deteriorate it, and which by the denomination of "public way" includes the one of which the soil itself is public (because the soil of a private road belongs always to the owner of the land who has made it, although the private road is also called "via publica" when all the world is allowed to use it. (Compare

Rural
roads.

Urban
streets.

the Laws 2, §§ 20-22, 25-32 eod., and notes 2, 22 and 33, 34.) But this interdiction regards only rural roads, and does not concern the streets of towns, of which the magistrates have the care (Lex 25, eod.); that is, the Ediles (*ἀστυνομικοί*) who ought to take care to prevent diggings in the streets, and buildings, by inflicting fines on the offender and by destroying what he may have done. “Ἐπιμελειόθωσαν δὲ (οἱ ἀστυνομικοὶ) ὅπως μηδεὶς ὀρύσσει, τὰς ὁδοὺς, μηδὲ χωνυήν μηδὲ κτίσῃ εἰς τὰς ὁδοὺς· εἰ δὲ μή, ὁ μὲν δοῦλος ὑπὸ τοῦ ἐντυχόντος μαστιγούσθω, ὁ δὲ ἐλεύθερος ἐνδεικνύσθω τοῖς ἀστυνόμοις, οἱ δὲ ἀστυνομοὶ ζημιούτωσαν κατὰ τὸν νόμον, καὶ τὸ γεγονός καταλύτωσαν” (Leo 1, § 2, Dig. 43, 10). French law. Compare Arts. 538, 542, 714 of the Civil Code; Art. 471, §§ 4-7 of the Penal Code, Law on Parish Roads; Arts. 10 and 21, the special law on the deterioration of roads of the 28th Sept., 1791; as also the note 149 (C).

Places of
worship,
&c.

148. A. Mussulman law. Places for prayer (*mekian namaz*) should be, from their nature pure and authorised by the law. To all others should be preferred the places especially dedicated to prayer, as the mosques, or the places which are the property of no one, as the desert or the uncultivated country. It is not lawful to pray on private property without the consent of the owner. (Tornauw, ‘Droit Mussulman,’ page 54.) It must be observed that instead of the phrase “edifices destined for prayer” of the text, the Greek translation of the Code says the places destined for prayer (*namazghiah*) with a note of remark that in certain provinces of the Ottoman Empire where there is no “Jami” sufficiently vast for the inhabitants, there are places surrounded by trenches or walls in which the Mussulmans say their prayers called *namaz*, every Friday and the other holidays. (See the Ottoman Code of M. Nicolaidès, page 452.) It seems then that the law includes places of this sort destined for prayer, and not edifices in general, which it does not mean. B. Roman law: “It is prohibited to do anything in a sacred place, and it is ordered to remove what one has done, and this out of regard for religion” (Lex 2, § 19, Dig. 43, 18). The care and the superintendence of the edifices and sacred places are confided to those who are appointed to keep in repair the sacred edifices (Lex 1, § 3, Dig. 43, 7).

As regards the inalienability of the sacred places: "If all that is religious, sacred, or public be sold, the sale is void (Lex 22, Dig. 18, 1); and it is for this that religious places (*loca religiosa*), that is those in which there has been an interment of a dead person, contained in a piece of ground sold, does not pass to the buyer, and he cannot bury a dead person in it (Pauli Sent. 1, 21, § 7). See also the following note:—

149. A. 'Droit Mussulman.' As regards the inalienability of public places, that is of lands *metruké*, left for the use of one or many communes, or for the population in general (Art. 5), the Ottoman law has adopted the same principles, as the Mussulman law. "Things which cannot become private property (*res communes publicæ*) cannot be the object of a sale. It is for this reason that all contracts for sale or purchase are contrary to law, which have for their object pasturages, streams of water, lakes, free men, things consecrated (*mevkuf*), with the exception, as regards these last, of those which, though consecrated to a use agreeable to God, would be deteriorated or destroyed for want of being sold (Tornauw, 'Droit Mussulman,' page 117). Besides the places mentioned in Arts. 92-94, there are also inalienable the sites for fairs or markets (Art. 95), stacks (Art. 96), pasturages (Art. 97), places for camping or commonage and for use as pasturage during summer and winter (Art. 101). As regards their imprescriptibility, see Art. 102 and note 157. B. Roman law. Things which from their nature are not commercial (*res extra commercium*) are inalienable. Thus "one can legitimately sell everything one can have, possess or follow; but one cannot alienate anything that nature or common right and received custom has withdrawn from commerce" (Lex 34, § 1, Dig. 181), and for this reason "one cannot buy anything that one knows is not susceptible of being sold, such as things sacred and religious places, and those which are not in trade, such as public places which do not belong to the people, but are destined for public use, as the Champ de Mars" (Lex 6 pr., eod). C. French law. (a) Things common or public. There are things which belong to no one and of which the use is common to all. Police laws regulate the mode of using them (Art. 714 of the Civil Code). Thus, the roads and streets taken care of by the State, the great rivers and navigable rivers, &c. &c.; and generally, all parts of French territory which are not susceptible of

becoming private property are considered as dependencies of the public domain (Art. 538). These things as *res extra commercium* are inalienable and imprescriptible (arg. ex Arts. 1598 and 2226).
 (b) Communal property. The communal property is that to which or to whose produce the inhabitants of one or more communes have an acquired right (Art. 542). As regards alienation, property which does not belong to private individuals is administered and cannot be alienated, but according to the forms and rules which apply to them (Art. 537). As regards, then, the alienation of communal property, compare the law of the 18th July, 1837, chapter 4, and chapter 5, with regard to the actions relative to it. As regards communal woods, compare Art. 90 and the following of the Forest Law, and Art. 128 and the following of the Ordinance of the 1st Aug. 1827.

150. See the preceding notes, 147 to 149.

151. See notes 147 to 149.

**Common
pastures.**

152. Besides the right of making use of the communal pasturage, the inhabitants of the communes have also the right of pasturage.—
 (1) In the forests of the State under certain restrictions, a right which the legislator found himself obliged to grant in Arts. 13 to 15 of the Forest Law, on account of the immemorial exercise of this right, as well as the French legislator, compare Arts. 61–85 of the French Forest Code concerning the right of usage in the woods of the State, and as regards the right of pasture of the communes (Art. 64). Provisions relative to the right of pasturage in the forests of the State are, according to the Law, the following :—

Art. 13. Every year the Mouktar of each commune must give to the local forest agent a statement showing the kind and the number of beasts which the inhabitants wish to bring to the forests of the State.

Art. 14. The forest agent, after having made himself acquainted with this statement, will name the district into which the flocks and herds may be admitted; he will fix the date and the length of the commonage as well as the conditions which they are to observe.

Art. 15. The beasts belonging to the inhabitants of the same commune will be placed under the superintendence of a common

guardian shepherd, who will take care that the limits fixed for the pasturage are not exceeded.

Art. 16. The dealers in beasts, strangers to the commune, who desire to station their flocks and herds in the forests of the State, must obtain the authorisation from the local forest agent, who will fix where they may be stationed. These owners will be subject to a payment in accordance with the existing rules and prescriptions.

Pasturage
in State
forests.

Art. 43. It is unlawful to feed any animals whatsoever in the forests of the State under a penalty of a fine of one piastre per animal, payable by the owner. In the case of unauthorised pasturage, there will always be a claim for damage, which cannot be less than the simple fine.

Art. 44. When the animals found trespassing are part of a communal flock, the prosecution will be against the guardian of the flock.

Art. 50. The owners will be joint guarantors for the judgments given against the guardians of their flocks, with the right of action against them.

Art. 52. The insolvent offenders who may not have solvent joint guarantees, will be imprisoned for a time containing as many days as the condemnation pronounced would make so many times two Beshliks.

The same inhabitants have also (2) another right of pasturage Lands in the lands Otlak, where the grass grows very short, and which, as Otlak. dead land, is not held by Tapu (see Art. 105). As to private pasturages which depend on Chiftliks, see Art. 99. As regards the Roman law, compare Chapter LX. of the Book XI. of the Code "De pascuis publicis et privatis."

153. That is to say, the contents inscribed in the Imperial Limits of archives. Consequently, the inhabitants of the communes cannot pasture to acquire by usucaption in the name of their commune any right of be pre-served. pasturage on the domanial lands not inscribed in the said archives as destined to the use of the communes.

154. See the sense of Chiftlik, in Art. 131. As to private pasturage according to Roman law, compare note 152 in fine.

155. "The yard signifies the habitation—or, better, the encamp- Iourt. ment—of agricultural people and shepherds; in a word, the group

of four or five huts together, such as they are seen still in our days in the environs of Kutahia" (Belin, No. 328, note).

156. For the meaning of the words "kishlak" and "yaylak," see note 52; compare also Art. 24.

No pre-
scription
as to public
forests, &c.

157. As the communes cannot invoke the usucapion against the State beyond the limits established for the communal pasture grounds (Art. 98, note 153), in the same manner no person can invoke the usucapion as regards land left for the public use of the communes or of the population, which are imprescriptible (compare also Art. 24 of the Forest Law, note 146); and this in conformity—(a) to Roman law, according to which "it is not allowed to grant the prescription of immemorial possession to acquire public places according to the rights of people" (Lex 45, Dig. 41, 3). Also, principally things incorporeal are susceptible of usucapion, except things sacred, holy, public, &c. (Lex 9, eod.); and, as regards public roads especially, "the people cannot lose a public road from non-use" (Lex 2, Dig. 43, 11); (b) to French law, according to which "one cannot prescribe the ownership of things which are not in trade" (Art. 2226 of the Civil Code). See, however, Art. 2227 as regards "communal property."

Mevat.

158. See above, Art. 6, note 23, and notes 161, 162. Compare also Arts. 12 to 13 of the Regulations regarding Tapu Title-Deeds. According to the definition of the 'Hidaia,' a work on Mussulman jurisprudence (which, besides, has been translated into English to serve as a guide in the administration of justice in India), and of which the doctrine on this subject is exposed in note 161, "Mevat" means any piece of unproductive land, either from want of water or by the fact of inundation, or from any other cause which prevents its cultivation; it is called "Mevat," dead, because, in the same manner as the thing struck dead, it is of no use. Text cited by Worms in the 'Asiatic Journal,' Oct., 1842, page 363. See Belin, note 221 following.

Tashlik.

159. That is "stony ground which cannot be cultivated until being cleared" (Belin).

160. "Pasturage, ground where very short grass grows, and which serves for pasturage" (Belin). Compare Art. 127.

Mevat.

161. A. Mussulman law. According to the doctrine mentioned in the 'Hidaia' (see note 158), every piece of ground which for a long

time has remained uncultivated, without belonging to anyone, or ^{Arazi} that has been formerly the property of a Mussulman actually ^{Mevat.} unknown, and which, at the same time is sufficiently distant from the village that from it the human voice cannot be heard, is called "Mevat." Whoever cultivates an uncultivated ground, with the permission of the Imam, obtains it as a property. "Abou Hanifa" makes of the permission of the Sovereign a condition "*sine quâ non*," whilst his disciples think that without that authorisation the property is acquired by right by him who cultivates it. "If an individual separates a piece of ground, and, after having placed marks with stones or otherwise, leaves it abandoned for three years without cultivating it, the Imam may, in this case, retake it and grant it to another; for this ground had been given with the intention of its being made productive, and in order that a benefit might result from it to the Mussulman community by the levying of tithes or tribute, &c." (see Belin, note 221, and following, where the different opinions of Mussulman jurisconsults are exposed in detail. Compare also, Tornauw, '*Droit Mussulman*,' pages 824, 826). As is seen, the Ottoman law admits precisely this doctrine; and as regards specially the condition "*sine quâ non*" of the Sovereign permission, it has conformed to the opinion of the founder of the "*doctrine Hanefite*" which has prevailed in Turkey, adopted by the Ottoman jurisprudence. The only difference which exists between the doctrine and the legislation consists in the provision of the law that the grant of the land may be given only on condition to rise again for that of the *Beit-el-Mal*; that is, to become the simple possessor by *Tapu*; whilst, according to the doctrine based on these words of the Prophet: "Whoever revives dead ground becomes its owner," the person who obtains the grant becomes owner, and on account of this precept the disciples of Abou Hanifa, as well as other orthodox doctors, do not consider as essential the Sovereign permission, and for the same reason probably the law does not entirely deprive the cultivator without permission of the right of becoming owner, but obliges him only to pay *Tapu*; in other words, it establishes in his favour a right of preference on the land cultivated in the case of a concession asked for by another. The law establishes also the right of property (*Mulk*), but only in favour of him who, with the Sovereign authorisation, has filled up a place taken from the sea (Art. 132). B. Roman law. Ownership is extin-

Disposal of
vacant
lands

Abandoned lands. guished by "derelictio;" that is, by the abandonment of the object, which is considered as "res nullius" until another person by occupation has acquired the ownership of it: "si rem pro derelicto a domino habitam occupaverit quis, statim eum dominium effici: pro derelicto autem habetur, quod dominus ideoque statim dominus esse desinit" (Inst. 2, 1). Also, we can acquire a thing if we know that its proprietor has abandoned it. But Proculus is of opinion that it does not cease to belong to the owner until it is taken possession of by another. But, according to Julian, it ceases to belong to the person who abandons, but it cannot belong to another if it is not possessed and justly (Lex 2, Dig. 41, 7). According to M. Guizot (cited by Belin, note 258), land subject to the land tax and abandoned by its owner fell to the Curie (court), which was bound to pay the tax until someone was found who would undertake to do it. As regards specially the legislation relative to private or domanial lands, abandoned or left uncultivated and desert by the owner or holder, compare Chapter LVIII. of Book XI. of the Code, "De omni agro deserto et quando steriles fertilibus imponuntur"; also Chapter VII. of Book XXXI. of the Digest, "pro derelicto." C. French law. According to the same author, "Under the second race of the kings of France the number of desert and uncultivated lands was immense; cultivators and even owners of the soil were wanting; more than one incumbent, in establishing himself on the domain he had received, considered as his property the solitude which surrounded him; and the King easily granted to these incumbents lands which they had cultivated or simply occupied" (Guizot, cited by Belin, note 259). According to a decree of the 6th Aug., 1766, lands of whatever quality or kind they are, which for forty years, according to public notoriety, may not have given any crop, will be considered "uncultivated land," and by a declaration of the 13th Aug. of the same year it was decreed that those who would clear the said uncultivated lands would enjoy as regards these lands for fifteen years exemption from taxes, &c., the whole, however, with the undertaking by them not to abandon the cultivation of the lands actually under cultivation of which they may be the owners, usufructaries or farmers, under pain of forfeiting the said exemptions.

Jibal
Mubah.

162. These kinds of wood may then be considered as things which belong to no one, of which the use is common to all, and it is

for this that the law has subjected them to nearly the same rules Jibal as public lands (Metruké). Compare Art. 5, § 1, Art. 30 and 106. Mubah. However, it must be observed that the Forest Law does not consider these forests as different from the others, so that they may be considered as belonging to the State, in opposition to the Law, which considers them as "res communis omnium," but as the Law is applicable only to forests which are declared "forests of the State" (see Art. 2 of the Law), the question may present itself as to whether the Government can or not subject the said forests to the actual régime of the Law.

163. See, in note 120, the meaning of the word "otlak." Compare also Art. 103.

164. It must be observed that it is not here a question of non-Trees of bearing trees planted with authorisation (Art. 29), or of those natural grafted or raised (Arts. 26, &c.). Compare Art. 28 modified and growth. note 146.

165. See Art. 4 (2).

166. A. Ottoman Metallurgic law (Regulations of Mines). Ownership The provisions of Art. 107 have been essentially altered by the of metals Regulations of Mines, dated 4. Mouharem, 1286 (3rd April, 1861), and minerals. which has repealed also the preceding law of the Mines of 1861. By the Regulations in force there has been regulated in detail the mode of the concession and the working of the mines of the Empire. However, it contains provisions by which the right of mining ownership has been diminished, substituted by another separate right relative to mines; that is, by their being worked by third parties, granted by the Government in virtue of an Imperial decree. The provisions relative to the right of the owner to a fixed payment, payable by the grantee, are contained in the following articles of the Regulations, of which the entire text is found classed in the administrative law under the title "Mines":—

Art. 39. Every grantee of a mine will pay annually to the Government two sorts of payments—one fixed payment for each donum of land contained in the limits granted, and another proportional to the production of the mine.

Art. 40. The fixed payment of a mine granted to be worked, by a Firman, will be five paras per donum of the superficies of the grant according to a horizontal plan, the donum being 1680 square

architectural archines. The fixed payment of mulk lands belongs to the owner, and that of domanial and mevkufé land to the Government. The value of the land bought to work the mine, as well as the indemnities for injury, will be paid by the grantees conformably to the special provisions relative to it.

Art. 43. The fixed payment for the land of the mine will be paid during the current year, but the proportional payment on the gross produce will be paid the following year and at fixed periods.

(b) As regards the indemnity for injuries which is to be paid to the owner, and the purchase of ground by the grantee, the said Regulations contain the following provisions:—

Art. 59. When the works for the working a mine are only temporary, and if the ground where they have been made can by the end of the year be restored to the original state, the indemnity shall be double of what the soil would have produced net in the year, and shall be paid to the grantee or the owner of the soil.

Art. 60. If shafts or galleries have been made in the land, or permanent works for working the mines have been established, and if the grantee could not come to an understanding with the owners for the purchase of this land, he will then be required to buy this land, and to pay for it at double the value put on it by the Government.

(c) As regards the working of substances comprised under the name of ore and specified in the third article of the Regulations, working made by the owner in virtue of a firman or by another, see the Arts. 75 to 77 of the said Regulations. (d) As regards the right of every proprietor “to make on his property any sort of excavations, having exclusively in view the seeking for mineral substances, without being obliged to obtain for this purpose any authorisation from the Government, and of the right of every other to make similar researches in virtue of a permission from the general Government, if the owner refuses his consent, compare the Arts. 11–19 of the Regulations. (e) But the quarries, under which qualification are comprised marbles, granites, flints, pozzuolana, sands, and other substances mentioned in Art. 4 of the Regulations, are not subject to the mining régime of the Regulations (Arts. 1 and 4). Consequently they are still governed by the provisions of the Law.

B. Roman law. According to the Roman laws, the right of

ownership of the soil extends to the space above and below the soil, as well as over fossils which are found below the surface of the soil (Lex 13, § 1, Dig. 8, 4; Lex 1 pr., 14, 15, Dig. 8, 2). And it is for this that things like sand, chalk, stones, produced by ground, as revenue are considered to be fruit, and consequently as a dependence of the soil. (Lex 77, Dig. 50, 16; Lex 7, §§ 13, 14, Dig. 24, 3; Lex 9, §§ 2, 3; Lex 13, § 5, Dig. 7, 1; Lex 18 pr., Dig. 23, 5). Compare Windscheid, 'Pandektenrecht,' § 144, and note 3; § 168 in fine, and note 2; §§ 169, 10; § 186n 2-4). However, as regards the legislation relative to the working of mines (domanial as well as private) exercised by the proprietor or by a third party, and to the rent paid to the State or even the owner, compare Chapter VI. of Book XI. of the Code, "De metallariis et metallis et procuratoribus metallorum."

Ownership
of mines
and
minerals.

C. French law. Compare the law of the 21st April about mines.

167. Treasure. A. Mussulman law. According to the commentator of the 'Multeka'—a work in which is set forth the Hanefite doctrine, and which may be considered as forming the basis of the Mussulman legislation of the Empire—"Rikiâz" is a collective word, meaning at the same time the mines existing in the bosom of the earth (maaden) and the treasures buried in the soil (kinz) by men. If the discovered treasure bears an Islamite mark, it is ranked amongst objects lost and found (loqta), and in this case it is subjected only to the relative dues; but if it bears an emblem of infidelity, such as the figure of an idol or of a cross, it will be subjected to "khums." Compare Belin, § 124, according to whom the different opinions of the jurisconsults on the rights of the State and of him who has discovered the treasure are exposed in the Fetavi alem guiri. As regards, then, the regulations relative (a) to objects lost and found (loqta), to which the Islamite treasure is assimilated, it is established that no inanimate object found, worth more than one dirhem, can be the object of a use or of a location without the consent of its legitimate owner (Tornauw, 'Droit Mussulman,' page 282). Sometimes, however, "Whatever is found in the desert, or buried in the earth, or in the intestines of animals, or in the bosom of waters, without its being possible to know the owner, become the entire property of the finder" (eod., page 283). (b) As for the khums, to which the non-Islamite treasure is subjected, the same author says that "khums" literally means

Treasure
trove.

"the fifth part," which, in the cases laid down by the law, the Mussulmans must allow to be deducted as tax from their patrimony (Eod., pages 61, 62). B. Roman law. According to the definition of the Law 31, § 1, Dig. 41, 1. "Thesaurus est vetus quædam depositio pecuniæ, cujus non extat memoria, ut jam dominum non habeat," the treasure belongs half to him who has discovered it, and the other half to the owner of the ground, or to the State if it be found in sacred or religious ground. If it be found in another's ground after researches without his consent, it belongs entirely to the proprietor (compare § 39, Inst. 2, 1, Lex unica, Cod. 10, 15; Lex 3, §§ 10, 11, Dig. 49-14). C. French law. According to the definition of the Art. 716 of the Civil Code (in fine): "The treasure is anything concealed or buried of which no one can pretend to be the owner, and which is discovered by chance. Thus the property of a treasure belongs to him who has found it in his own ground; if the treasure be found in the grounds of another, it belongs "the half to him who has discovered it, and the other half to the owner of the land" (see the same article). As regards objects lost, see Art. 717 of the same Code.

Forfeiture
by crim-
inal.

168. Unworthiness to inherit—murder. A. Mussulman law. The Mussulmans recognise three causes of absolute incapacity to inherit: (1) The state of servitude; (2) the murder of the deceased, committed by the heir; and, as regards domanial lands or mevkufé, the Ottoman Code has added: (3) the difference of nationality. (a) As regards the servitude, see Art. 112 and note 172; and with respect to the difference of religion, see Art. 109 and note 169. As regards the difference of nationality, see Art. 110 and note 170. With respect to murder: "He who voluntarily has killed another cannot inherit from him. An involuntary homicide by imprudence or awkwardness does not render unworthy of inheriting; but the absence of criminal intention must be entire" (Tornauw, 'Droit Mussulman,' page 256). It is thus the minor murderer who, according to the doctrine *malekite*, is in a state of impuberty, is not considered as unworthy of inheriting, for every homicide committed intentionally by a minor is always considered as involuntary (Solvét, 'Successions Mussulmanes,' page 8). However, as regards the imputability of minors, according to the penal Ottoman law, compare Art. 40 of the Penal Code, and with respect to murder in general, Arts. 168, 175, 182 of the same

Code. But, according to other sects, "Homicide prevents ^{Forfeiture} inheritance, whether committed intentionally or involuntarily" for crime.

(El-Khazin, cited by Solvet, 'Success. Mussul.,' page 7, note).

B. Roman law. He who, intentionally or involuntarily—that is, by negligence (*per negligentiam et culpam suam*)—has caused the death of the deceased (*id egisse, ut moreretur*) is considered as unworthy to inherit, and as such excluded from the inheritance or the acquisition of the thing bequeathed by the deceased to the murderer, which falls to the fisc; that is, the State. Compare Lex 3, Dig. 34, 9; Lex 10, Cod. 6, 35; Lex 7, § 4, Dig. 48, 20; Lex 9, Dig. 49, 14. It is the same for the heir who does not revenge the murder of the deceased by a judicial prosecution, or by the neglect of whom the legal pursuit has ceased (Lex 21, 17, Dig. 34, 9; Lex 8, § 1; Lex 15, 22, Dig. 29, 5; Lex 1, 7, 9, Cod. 6, 35), unless the heir be a minor (Lex 6, Cod. 6, 35). However, the provisions relative to this last unworthiness are considered in countries where Roman law is still in force by the one party as inapplicable to-day from moral motives (Sintenis, 'Das practische Civilrecht,' § 205, note 9); by the others, on the contrary, as applicable (Muehlenbruch in the continuation of the 'Pandekten' of Glueck, vol. xliii., page 477). With respect to other cases of unworthiness, compare Dig. 34, 9, "*de his quæ ut indignis auferuntur*," and Code 6, 35, "*de his quibus ut indignis hereditates auferuntur*," Nov. 115, chap. 3, §§ 13 and 15; chap. 4, § 6, &c., &c. Compare in this respect Windscheid, 'Pandektenrecht,' §§ 669–674. C. French law. Those unworthy of inheriting, and as such excluded from inheritances: (1) He who has been condemned for having caused the death, or tried to cause the death of the deceased; (2) he who has brought against the deceased a capital accusation judged to be calumnious; (3) the heir, not a minor, who, informed of the murder of the deceased, has not given notice to the officers of justice (Art. 727 of the Civil Code. Compare also Arts. 728–730). As regards the incapacity of him who is civilly dead (Art. 725, § 3 of the Civil Code), it is known that civil death, which is the consequence of a penal condemnation, established by Arts. 22, 23 of the Civil Code, is abolished by the law of the 31st May, 1854, of which the provisions have taken the place of the Articles mentioned (22, 23 of the Code), and according to which only the condemned to perpetual "afflictive" punishment (see Arts. 28–30

of the French Penal Code) may not dispose of his property wholly or in part, either by gift to living persons or by will, nor receive on this ground, except it be for food, &c. (Art. 3 of the said law). However, compare also Art. 31, § 2, of the Ottoman Penal Code.

Religious
disability.

169. Incapacity to inherit—difference of religion. A. Mussulman law. An unbeliever, however near relation he may be of a Mussulman, cannot inherit from him; if the son of a Mussulman is an unbeliever, and the grandson a Mussulman, this one inherits his grandfather (Tornauw, 'Droit Mussulman,' pages 254, 255). A Mussulman, on the contrary, takes of the inheritance of an unbeliever the portion which falls to him by law. But with the Shafites and the Azemites a Mussulman no more inherits from an unbeliever than the unbeliever does from a Mussulman (eod.) that which the Ottoman law has also reserved respecting land. B. Roman law. The apostates and some of the heretics have been declared incapable of inheriting: "ipsos quoque (that is, Manichæos vel Donatistas) volumus amoveri ab omni liberalitate et successione, quolibet titulo veniente" (Lex 4, Cod. 1, 5). Compare also, as regards the other heretics, "Ariani et Macedoniani, Pneumatomachi," &c., the Law 5 (eod.), and, as regards apostates, the Law 3, Cod. 1, 7.

Racial
disability.

170. Incapacity of inheriting—difference of nationality. A. Mussulman law. Infidels do not inherit each other respectively, unless they live in the same country. Mussulmans, on the contrary, inherit one from the other, no matter whether they be or not subjects of the same state. But the Shiites in no case regard the difference of nationality as a hindrance to inheriting (Tornauw, 'Droit Mussulman,' pages 255, 256). B. Ottoman law. The Code has established the inability of the foreigner to inherit the land of an Ottoman subject. But by a later law it has been granted to foreigners whose Government has adhered to the Protocol ad hoc the right of holding immovable property. Consequently, the question presents itself to know whether the inability in virtue of the Code can still be applicable to the said foreigners who profess the same Mussulman religion as the deceased, or to foreigners who profess the same religion or a different religion, not Mussulman, as regards the deceased. The said law says nothing in this respect. From the comparison of Art. 2, § 1, and Art. 4, with the said Protocol, it does not result, either absolutely or necessarily,

that the inability must be considered still to be in force (see law No. 13, and the Protocol, Lég. Ott. Vol. I. No. 8, page 22). As the inability established by the Law was not established as an essential provision of the Mussulman law, but rather as a consequence of the principle that foreigners in general could not have a right to hold property on Ottoman territory, it appears that Art. 110 of the Law has been modified as regards the said foreigners, Mussulmans or not. C. Roman law. According to the legislation previous to that of Justinian, any person who has not the right of contracting, according to the rules of the Roman Civil Law, the "*commercium juris civilis*," but only according to those of *jus gentium*, were considered incapable of inheriting, whether by will or intestate, and amongst those persons were also the *peregrini*; that is, the foreigners (compare Ulpian, xxii., 2 Lex, Cod. 7, 2). D. French law. The provision of Art. 726 of the Civil Code, according to which strangers had not the right of inheritance of property situated in France but on condition of reciprocity between states, has been abolished. In consequence foreigners have the right to inherit in the same manner as the French. Compare Art. 1 of the law of 14th July, 1819. Nevertheless, in the case of the division of an inheritance between joint heirs, foreigners and French, the latter will deduct from the property situated in France a portion equal to the value of the property situated in a foreign country from which they would be excluded on any grounds, in virtue of the laws and local customs (Art. 2 of the said law). E. German law.—According to § 3 of the Constitution of the German Empire, the subjects of a confederate state are in another confederate state considered as indigenous of that state. In consequence they cannot be excluded from an inheritance as foreigners when that state establishes perhaps the incapacity of foreigners. Compare also § 39 of the law of the 21st June, 1869, concerning the guarantee of legal assistance. As for the question to know whether the right of foreigners to inherit as regards landed property in the various States is to be decided by the law as to persons, or by the real law, compare Fœlix, '*Droit Internat.*,' private, § 56 *suiv.*, and esp. 60; Bar, '*International Privat-und Staatsrecht*,' page 376.

171. Abandonment of the Ottoman nationality. The Ottoman subject who has acquired a foreign nationality with the authorisation

Loss of old nationality by acquisition of new. of the Government is considered and treated as a foreign subject (Art. 5 of the law about Ottoman nationality, *Lég. Ott.* Vol. I. p. 8). In this case the change of nationality does not show that it can produce the confiscation established in Art. 111 as a consequence of the abandonment of the Ottoman nationality. But in the case of naturalisation in a foreign country without previous authorisation, it will be null and void. However, the Government can declare the loss of the quality of Ottoman subject (see Arts. 5 and 6 of the said law). After such a declaration, confiscation is an immediate consequence. Mussulman law. The inheritance of him who abandons Islamism, Murtad, enures for the benefit of the believing heirs, and on failure of this, for the benefit of the Imam or, according to the Shafites, of the Beit-el-Mal. (Compare Tornauw, '*Droit Mussulman*,' page 255.)

Legal position of slaves.

172. Slavery. A. Mussulman law. There are in a state of slavery only infidels made prisoners of war, so that the Christians, the Jews, and the pagans even, who inhabit Mahometan countries and who pay their capitation '*jezié*,' cannot be reduced to the state of slavery. Nevertheless, it is actually in general use to have in almost all Mahometan countries black slaves who have not been made prisoners of war, but who have been reduced to this state by cunning and violence. And it is thus that, contrary to the fundamental principles of Islamism, children and adults of free condition are sold as slaves. These acts on the part of Mussulmans remain, however illegal, and cannot be protected by law. Property in slaves, besides the direct acquisition by captivity in war, can be acquired in three ways: by sale, by gift, and by inheritance; and it is a rule, as regards the sale, that the slaves may be sold in families or separately (Tornauw, '*Droit Mussulman*,' pages 222, 223). As regards the liberation, and especially (1) voluntary liberation by the master, compare *eod.*, chap. ii., page 225; (2) the legal liberation, page 227; (3) liberation by the act of the last will, page 228. As regards the "ransom of the slave," compare chap. v., page 229; invention of a fugitive, page 231; connection and procreation of children with a female slave, page 231. The slave cannot inherit from a free man, nor vice-versâ (see page 256). He is deprived of the administration of his property, if he have any, because it is the master who is the manager of it (page 206). B. Ottoman law.

(1) With regard to the land purchased by permission of the master, the Ottoman law, on the contrary, prohibits any interference of the master or his heirs. (2) It is unnecessary to say that to-day the principles of right of Mussulman war, according to which prisoners of war were made slaves—principles quite opposed to the dispositions of modern international law—being no longer in force, the direct acquisition by captivity of war can no longer take place. (3) As regards the sale of free negroes, abusively made by certain individuals, the authors of these abuses are prosecuted by the authorities. As regards, then, the prohibitive measures for the sale of slaves, compare the first section of public law; that is, the *droit politique*. C. Roman law. It is known that in the Roman legislation the slave was considered as a *res*; that is, a thing without any personality; the master had over him a right of full property, and whatever was acquired by the slave became by perfect right the property of his master. He could not purchase by agreement; only he was allowed the management of the separate estate (*peculia*), of which, however, the ownership belonged to the master. As not having the *commercium juris civilis* (see note 170 c), the slave was incapable of inheriting himself; if then a *servus alienus* was appointed heir, the inheritance fell to the master. Compare *Lex* 53, *Dig.* 5, 1; *Lex* 5, *Dig.* 53, 40; §§ 3, 4, *Inst.*, 2, 9; *Dig.* 15, 1; *Ulpian*, xx. 26; *Gaius*, ii. 185–190; *Inst. pr.*, 2, 14. And see Thibaut, '*Geschichte und Institutionen des Römischen Rechtes*,' §§ 117–118, 245.

173. Invalidity of the sale by reason of violence. A. Ottoman Alienation law. The disposition of the law is similar to Roman law, according to which the *actio quod metus causa* is an action in *rem scripta*. It is thus that the seller or his heirs (the direct as well as the collaterals, note 100) will have the right of revindication against every holder of the land. In the same way as it results from the provisions of the article in fine, the sale is not void by full right, but it may be impeached, in conformity also with the French Civil Code (Arts. 1117 and 1304), and with the dominant doctrine to-day in Germany as regards the meaning of the Roman laws. B. Roman law. Compare *Dig.* 4, 2, *quod metus causa gestum erit*; *Cod.* 2, 20, *de his quae vi metusve causa gesta sunt*. C. French law. Compare Arts. 1112–1115, 1117, and 1304.

Sale under
illegal con-
ditions
void.

174. Nullity of alienation made with conditions considered illegal According to Mussulman law, a gift between relations is a contract of the class irrevocable; and consequently it requires, to make it or to cancel it, the reciprocal consent of the parties. Thus it is settled, that it is not allowed, when the gift is an irrevocable contract, to make it with conditions or for a term (Tornauw, 'Droit Mussulman,' pages 182, 183). Probably the law makes allusion to this rule of common law in the dispositions indicative of the article in question; see, however, Arts. 38, 39 and notes 77, 78. As to the conditions considered illegal in a sale, any work on Mussulman law may be consulted.

Sale of
lands of
debtor.

175. Forced sale of domanial lands. The provisions of Art. 115 have been modified, in the first place: (1) in favour of the State, by the law "on the forced sale of Mirié lands (domanial) held by debtors to the State," dated 7. Rebiul ewel, 1279, and afterwards they have been totally abolished; (2) in favour of creditors of every sort by the law on the forced sale of lands Mirié, and of land Vakf called Musakafat and Musteghillat for the payment of debts of the holder, dated 18. Shaban, 1288. The entire text of these laws is given in Nos. 7, 15, and 22. It is well understood that by the forced alienation established by the said law in favour of every creditor, the provisions of the Land Law relative to the permission of the authority in the case of voluntary sale has lost its previous importance.

Conditional
sale, &c.,
valid.

176. Sale with faculty to repurchase. Conditional and hypothecating alienation, or firagh bil vefa (Arts. 116-118). The provisions of Arts. 116-118 have been in part modified, in part abolished, and in part completed (1) by the Arts. 25-30 of the Tapu Law; (2) by the law about the forced sale of land Mirié and Mevkufé mortgaged for the payment of the debt in case of the decease of the debtor, dated 23. Ramazan, 1286 (see No. 15); and (3) by the law on the hypothecation of property, dated 21. Rebiul achir, 1287 (No. 16).

A. Formality extrinsic (of the conditional and hypothecating alienation; that is, of the legal act "firagh bil vefa," alienation until payment). The Art. 116 has been completed by the Arts. 26, 30 and the supplementary Art. of the Tapu Law (see again Art. 1 of

the law of the forced sale of hypothecated property); compare, however, the said law "on Hypothecations in general."

B. Conditions and procedure. As regards the procedure to be followed for a forced sale: (1) during the life of the debtor, the Art. 117 has been completed by the Art. 27 of the Tapu Law; (2) after the decease of the debtor, the Art. 118 has been modified by the Arts. 28 and 29 of the same Law, but the provisions of these articles have afterwards also been essentially modified by the law on the forced sale of hypothecated property, see Arts. 2, 4, and pr. of the law. Conditional sale, &c., valid.

C. Mortgage in general. As to the formalities and conditions of the mortgage of landed property other than lands Mirié, see the said law on the mortgage of land. As regards the institution sui generis of "firagh bil vefa," which, from a certain point of view, may be considered as a sort of voluntary and singular transfer of property made by the debtor to his creditor "cessio bonorum voluntaria et singularis," compare Dig. 43, 2 Cod. 7, 71, and Arts. 1265-1270 of the French Civil Code, and which, from another point of view, on account of the modifications made, is become an institution almost hypothecating. Compare D'Ohsson, 'Tableau de l'Empire Ott.' (vol. vi., page 73).

177. This act of procuration made before the kadi is designated Trustee for by the expression "Hudjeti vekialeti devrié" (compare Belin, who mentions a document of this sort, page 239). sale.

178. See note 176, on the modifications made in the Arts. 116-118.

179. See also note 176.

180. Actio doli (between seller and buyer). A. Mussulman law. The contract of sale forming part of the irrevocable contracts cannot be revoked but by the mutual consent of the contractors. But it may be attacked on account of discovered fraud (chior ghebn). When in the sale of the thing the seller has made use of deceit and fraud, the buyer has the right of cancelling his engagement as soon as he discovers the employment of these means (Tornauw, 'Droit Mussulman,' page 129). B. Ottoman law. The text of the Art. 119 says, "Tagrir ve gabni fahish," which, according to the Greek translator, signifies the fraud of the seller who has represented the object of the sale as having qualities which Sale got by fraud void.

Saletainted with fraud is void. it had not, or who has sold the object at a price above its real value ('The Ottoman Codes,' by Nicolaides, page 459, note 1). It is for this that in the note 78, page 86, it is said that the sale can be cancelled on account of deceit or fraud regarding faults justifying annulling the sale. 2. According to the Tapu Law (Art. 24), any difference on account of deceit or fraud, as well as any other suit concerning domanial land, which are decided by religious law, are to be heard in presence of the administrative functionaries of the Finance who represent the owner of the land (see note 130, § 2, and Art. 1 of the said Law). In the same way in suits relative to mortgages (see Art. 30 of the same Law). This functionary may, then, be considered as a sort of Public Ministry who protects the rights of the State (compare by analogy Art. 83, §§ 1, 84, and 112 of the Civil French Code of Procedure). C. Roman law. As regards the sense of *dolus* as a fact, meaning the nullity of an agreement in general, compare *Lex* 1, § 2, *Dig.* 4, 3; *Lex* 7, § 9, *Dig.* 2, 14; *Lex* 43, § 2, *Dig.* 18, 1. As regards the fraudulent sale of a piece of land: "If the buyer has been deceived as to the quality of the acres of land sold, he has the action of the purchase" (*Lex* 34, *Dig.* 19, 1). D. French law. (Compare Arts. 1109, 1116, 1117, 1304, and 1658 of the Civil Code.)

Donatio mortis causa.

181. Alienation and *donatio mortis causa*. A. Mussulman law. When the giver makes a contract of gift during an illness, this act preserves all its validity after recovery; but if the giver die from the disease during the existence of which he has consented to the contract, the heirs have the right to keep at least two-thirds of the inheritance and to leave to the donee at the most one-third" (Tornauw, '*Droit Mussulman*,' p. 183). B. Ottoman law. (1) The Code treating in general of alienation *mortis causa* does not give anything in this respect in favour of the heirs, as the common law of the Mussulmans does. (2) As for gifts between living persons, see Arts. 36, 38-39, notes 71 and 78. (3) As regards gifts of domanial land made by foreign subjects possessing the right to hold landed property, compare the law granting to foreigners the right of property, Arts. 4-5 (No. 13). C. Roman law. Compare *Dig.* 39, 6, *de mortis causa donationibus*, and *Cod.* 8, 57, *de donationibus causa mortis*. Amongst the various kinds of gifts

on account of death, only that which is made "*cum quis imminente periculo commotus donat*" (Lex 2, Dig. eod.), that is donation on account of imminent danger, corresponds exactly to the Art. 120, which requires a state of mortal illness. D. French law. Compare the provisions relative to testaments, by which alone is gratuitously made every disposal of the property of a person for the time he will no longer exist. See Arts. 893, 895, 967 and following of the Civil Code.

Donatio mortis causa.

182. According to Mussulman law, one can consecrate only things over which he who consecrates has an incontestable right of property (Tornauw, '*Droit Mussulman*,' p. 196). The holder of a domanial estate not having then a right of property over it, must first acquire by sovereign patent the full ownership of the land he wishes to consecrate.

Only full owner can dedicate land.

183. Ecclesiastical property. A. Canonical law. There are two categories of objects belonging to a church :—(1.) Those which are immediately destined for worship (for example, the church) and consecrated with particular solemnity; that is, the sacred objects (*res sacræ*) which, according to their solemnisation, are either *res consecratæ* or *res benedictæ*. To these sacred objects the laws of property are inapplicable, because they are *res extra commercium*; their dishonour is prohibited under penalty even by political law. (2.) The other things of the church have not such a destination for the divine service, but they are destined only for the external wants of the church. They are in part assimilated to the secular property, with the difference only that they are subjected to a particular superintendence, and their alienation is difficult. They are called ecclesiastical property in a particular sense, "*res ecclesiasticæ in specie, patrimonium aut peculium ecclesiæ*." This distinction is also observed by the Protestants. The alienation of property of the last category is also permitted only from imperious necessity. (Compare Walter, '*Kirchenrecht*,' § 267, edit. 14, by Gerlach, 1871.)

Land held to religious uses.

As regards the exceptional cases, in which an ecclesiastical landed property can be alienated according to canonical law, it is established in ecclesiastical law that only for legal motives and after certain formalities can the alienation be allowed. (1.) Legal motives are

Formality
of sale.

considered, as such, an absolute necessity, as payment of ecclesiastical debts, ransom of prisoners of war, maintenance of the poor during a time of famine, for which cases even the *res consecratæ* are alienable; or an evident advantage which is realised for the church by such an alienation. (2.) *Formality.*—The bishop cannot grant the permission for alienation until after hearing the parties interested in this respect, and after having received the assent of the ecclesiastical council of the diocese (*synodus diœcesana*), in the direction of which it is considered as an episcopal senate. With the Protestants in Germany the consistory or the sovereign carries out the duties of the bishop with regard to this. Compare (a.) As regards necessity: c. 70, c. xii. g. 2 (*Ambros. a*, 377); c. 50, c. xii. g. 2 (*Concil. Carth. vi.*, a, 419); c. 21, c. de §§ *eccles.* (1, 2); Nov. 120, c. 9, 10, c. 14, 16, c. xii. g. 2 (*Greg. 1*, a, 597); c. 15, eod. (*Idem*, a, 598); c. 13, eod. (*Concil. Constant. iv.* a, 869). (b.) As regards the advantage: c. 52, c. xii. g. 2 (*Leo*, 1, a, 447); c. 20, eod. (*Symmach. a*, 502); c. 1, de reb. eccl. non alienandis in vi. (3, 9). (c.) Consent of the council eccl.: c. 51, c. xii. g. 2 (*Concil. Agath.* 506); c. 1, 3, 8, x. (3, 10); c. 2, x. (3, 24); c. 2, de reb. eccl. non al. in vi. (3, 9). See *Walter*, eod. § 253, and notes 2, 3, and 5. For those who wish to consult this work, we remind them that it has been translated into Italian and Spanish; there is also a translation of the 8th edition in French, by *Rougemont*, with the title ‘*Manuel du Droit ecclésiastique de toutes les Confessions Chrétiennes*,’ 1841. It seems that the new French translation which the author had promised in his 13th edition has not been published.

B. *Civil law, Ottoman.* Like the landed property of the political communes, in the same manner the landed property of the ecclesiastical communes—that is, those which belong to a church or monastery, and which are inscribed in the Registers of the Imperial Archives—are subject to the same dispositions as regards their inalienability. As is seen, the political Ottoman law, as regards land, establishes an absolute prohibition of the alienation of a property registered in the Imperial Archives, whilst according to the ecclesiastical canons the alienation can take place at least exceptionally. It is quite natural that an alienation of landed property without an Imperial authorisation does not seem to be able to have any effect as regards the political law, although the alienation be

conformable to the ecclesiastical laws. As to the political guarantee, to the administration of the property in question, as well as for all that is relative to it, compare the chapter, 'Droit public ecclésiastique,' classed in *Lég. Ott.* Vol. II. 'Droit public.'

184. Land formed after the retreat of the water of a lake or of a river. A. Roman law. According to the Roman laws an island which forms itself in a public river becomes the property of the bordering proprietors; a line drawn in the middle of the river forms the limit of their domination (§ 22, *Inst.* 2, 1; *Lex* 7, §§ 3, 4; *Lex* 29, 30 pr., § 2; *Lex* 56 pr., 65, §§ 2, 3, *Dig.* 41, 1; *Lex* 1, § 6, *Dig.* 43, 12). It is the same if, by the abandonment of the bed of a public river, new land has been formed (§§ 23, 24, *Inst.* eod.; *Lex* 7, §§ 5, 6; *Lex* 30, §§ 1, 3; *Lex* 38, 56, § 1, *Dig.* 41, 1); otherwise, in private waters as well as in lakes, compare Windscheid, 'Pandektenrecht,' § 185, notes 1-2. As regards new land formed by the alluvion, that becomes the property of him from whose land the alluvion has taken place (§ 20, *Inst.* eod.; *Lex* 7, § 1; *Lex* 56 pr., *Dig.* eod.; and the same author, eod. note 3). See also the above note 124, of which the laws there indicated must be corrected as follows: *Lex* 7, § 6, *Dig.* 41, 1; and *Lex* 30, § 3, eod. B. French law. The islands and banks which form themselves in the beds of streams or navigable rivers belong to the State if there be no contrary title or prescriptions (Art. 560 of the Civil Code); but those which form themselves in rivers not navigable belong to the bordering landholders, in accordance with the Roman law (Art. 561). Compare in general Arts. 556-563 of the same code.

185. Waters drinkable and for irrigation. A. Mussulman law. The springs which show themselves at the surface of the ground without man's aid and which form the rivers, the rivulets, and the streams, cannot be the property of individuals; many jurists question whether even the Sultan has the right to grant the exclusive use of it to certain individuals (*Tornauw*, 'Droit Mussulman,' page 285). B. Roman law. In general, running waters (*aqua profluens*) are considered as *res communes omnium* (§ 1, *Inst.* 2, 1), and consequently the State could only regulate the use of public streams (*Lex* 17, *Dig.* 8, 3; *Lex* 2, *Dig.* 43, 12; *Lex* 1, § 42, *Dig.* 43, 20). Nevertheless, the streams which do not flow constantly are not subject to public use: "*Fluminum quædam publica sunt*, Water for drinking and irrigation."

quædam non. Publicum flumen esse Cassius definit quod perenne sit" (Lex 1, § 3, Dig. 43, 12). "Item fluminum quædam sunt perennia, quædam torrentia. Perenne est, quod semper fluat, *ἀέναος* (torrens), *ὁ χειμύρροος*" (Lex 1, § 2, eod.). As regards rivulets, the doctrine is not unanimous; many jurists pretend that these are not excepted from common use. (See Windscheid, 'Pandekt.' § 146, note 7, who, on the contrary, considers them as belonging to private property.) C. French law. "Streams, navigable rivers, and the seashore are considered as dependencies of the public domain" (Art. 538 of the Civil Code). With respect to the regulations of water for irrigation, compare the laws of April 29, 1845, and of July 11, 1847, on irrigation; compare also the Law of June 10-15, 1854, on the free flowing of water from drainage.

Kyuk
Terke.

186. Kyuk terke, "what remains of the root;" fields of which the crop is in course of development, or those where something has been left after the harvest (Belin).

Law
against
trespass.

187. In virtue of Art. 261 of the Ottoman Penal Code, besides the condemnation to pay damages, those will be punished by fine who take their beasts to cultivated land belonging to others. Administrative measures besides have been taken in this respect. (See the chapter "agriculture," classed with administrative law.) Compare also Art. 479, § 19, of the French Penal Code.

Boundaries

188. Boundaries of towns. The new delimitation of towns and villages probably appears to have no other view than that of the exact delimitation of private property and of the domain of the State. (Compare Art. 2, § 1.)

189. See note 66 and Art. 34.

190. See the notes 52 and 160, and Arts. 24, 101, 103, and 105.

Khas.

191. The domains (khas) were assigned in every province to the post of Governor-General instead of pay to this functionary. (D'Oshson, 'Tableau de l'Emp. Ott.' vol. vii. page 379.)

Vinghana.

192. This expression is Bulgarian: derived from *bachta*, father; *bachtene* means the patrimonial property which comes from the father (Belin, § 316, note 1).

193. Vulgarly *boinouq*, derived from *voïouman*, "to fight," in *Bashtin*, Bulgarian means "soldier." The Turkish army counted formerly in its ranks a corps of 6,000 Bulgarians, Mahometans, or Christians, destined to act as grooms and servants (Belin).

194. *Chiftlik*, see Art. 131.

195. See Article 72.

196. The *donum* is the square place which a pair of oxen can *Donum* plough in a day, being a square place of 40 archines (*Ami Boué*, cited by Belin, § 319, note 1.)

197. See Arts. 60 and 65 and note 100.

198. The legal term "*fol enchérisseur*," meaning the bidder who does not fulfil his engagement, and that of "*folle enchère*," the new auction made for his account, the term used by M. Belin in the text of the Code, instead of "*plus offrant*," appears to us improper, unless it be used in practice. As regards *Chiftliks* belonging to minors, compare Arts. 31 to 33 of the *Tapu Law*. Sale of land when heirs fail.

199. *Mole*. A. Ottoman law. According to a special regulation concerning the construction of new quays (*richtim*) on the shores of the Bosphorus, &c., by the owners of houses situated near the sea (dated 9. Rebi ul achir, 1280), these new quays, as dependencies of the houses and other neighbouring property, are subject to these by the title of free property (*mulk*) or as *vakf*, according to the nature of the property of the houses (compare Art. 11 of the said Regulations). B. Roman law. Although the sea as well as the shores of the sea are considered as *res communes omnium* (§§ 1, 3, 5, Inst. 2, 1), and called *res nullius* (*Lex* 14 pr., Dig 41, 1), nevertheless the establishments or buildings made on the sea or the shores are not withdrawn from the private domination (§ 1, Inst. 2, 1; *Lex* 4 pr.; Dig. 1, 8; *Lex* 5, § 1; *Lex* 6 pr.; *Lex* 10, Dig. 1, 8; *Lex* 14 pr.; *Lex* 30, § 4, Dig. 41, 1). But for these buildings the permission of the authority was necessary: "*Quamvis, quod in litore publico vel in mari extruxerimus, nostrum fiat, tamen decretum prætoris adhibendum est, ut id facere liceat*" (*Lex* 50, Dig. 41, 1. Compare also *Lex* 3, § 1, Dig. 43, 8). Dealings with sea-shore.

200. See Article 4, § 2.

Sheikh ul
Islam.

201. Sheikh ul Islam, as supreme interpreter of the religious law, being at the head of the body of Ulemas—that is, the judges (kadi) and jurisconsults (mufti) of the religious law and of the ministers of the religion (imam), he is invested with the supreme spiritual dignity in the State, as the Grand Vizier is invested with the temporal dignity. He is the superior Patriarch, the pope of the Ottoman Empire, and he is distinguished like them by special honorific titles. Although the supreme judge still, as mufti of the capital, he has no judicial vote, but only consultative, which determines the decision of the judge. But he decides as judge only in the cases sent to him by the Sultan. (Compare D'Ohsson, 'Tableau de l'Empire Ott.,' vol. iv. part 2, page 506; and Von Hammer, 'Des Osmanischen Reichs-Staatsverfassung und Staatsverwaltung,' vol. ii. pages 372–375.)

Divan
Humayun.

202. Divani-humayun kalemi. This chancery of State, which is attached to the Ministry of Foreign Affairs, is subdivided into three offices, of which one, the Beglik Kalemi, is the one in which are drawn up all the documents and constitutions of the Empire. It contains the copies of the Firmans and the archives of the laws (kanunnamé) and of the treaties, with the Register of all the firmans and berats which have been long since drawn up, so that it contains the copy, the archives, and the Register. (Compare the work of Von Hammer, 'The Constitution and the Political Administration of the Ottoman Empire,' mentioned in the preceding note, vol. ii. pages 119–120.)

Explana-
tory.

203. Archives of the State (see note 133). It is to be observed, in finishing these notes, that we have not had in view to give an explanation of the Code, but, as is seen by its comparison to Roman law and to French legislation, to facilitate the appreciation of the provisions of the Code in a legislative point of view.

Notes to 2.

1. As regards the distinction between land Mevkufé and the other properly called Vakf lands, compare Art. 4 of the Land Law, notes a, b, and 20. Distinction between lands.

2. Titles of possession of foreigners.—As regards titles of possession or of property in general of strangers, whose governments have adhered to the protocol relative to them, compare the circular of the Sublime Porte to the heads of the legations concerning “the exchange of ancient title-deeds for new,” showing the true nationality of the holders (Lég. Ott. Vol. I., No. 9, page 25). After the effect of the said circular, the journal ‘*Jeridéi Havadis*’ has just published, in this respect, an official communication which by a Vezirial order to the governors-general of the vilayets, dated “1 Djemazul achir, 1289” (24 July, 1872) has also been published in the provinces. Title of alien.

Here is the translation of the communication according to the journal ‘*Turquie*.’ The subjects of the Powers who have signed the arrangement published on the 7th Safer of the year 1284 of the Hegira who would wish to obtain definitive title-deeds of property in their own name in exchange for the title-deeds which have been previously delivered to them, are informed that they can make this exchange within a year from the 13th August, 1872, up to the end of the month of July 1873. They will have to pay only the third of the tax imposed on the new Hodjets (title-deeds). This delay expired, they will have to pay to the Treasury the whole of these dues, without any reduction and according to the tariff in force. Compare also notes a, b, and Art. 3 of the Land Law and Art. 8 of the new instructions concerning Tapu operations.

3. Functionaries of the Tapus.—The Regulations of the Tapu were published at a time when the previous administrative régime was in force, according to which, besides the Vali and Mutessarifs, the officers ad hoc of the financial administration, administrative councils (mejlis) were established in each Sanjak as also in every Vilayet. These functionaries of the financial administration of the Vilayet and the Mutessarifs of the Sanjaks, as representing the Tapu officers.

Tapu
Officers.

owner, the State, have been entrusted with the granting domanial lands to individuals. In a similar manner the said councils to whom had been confided at the same time the jurisdiction and the administration were entrusted (1) with the previous collection of the fee paid to the State at the sales, grants or hereditary transfers, which were afterwards passed before the said functionaries; and (2) with the putting up to auction the lands belonging exclusively to the State (Art. 18). According to the present administrative régime established by the law of the vilayets (see the administrative law), administrative councils distinct from the judicial councils—that is, from the ordinary tribunals—are also formed in each sanjak kaza, and in the capital of the vilayet, which are also entrusted with all that concerns the revenue of the Tapu (Arts. 14, 24, and 48 of the same law), and by whose medium, consequently, the putting the said lands up to auction is done. According to the same law, the finances and the accounts of the Vilayet are entrusted to a functionary of the Ministry of Finance, bearing the title of Defterdar (director of the finances), Art 7; also the finances of the Sanjak are confided to the Mouhassebedje (sub-director), and those of the Caza to the Caimacan (sub-governor). These then are the authorities before whom all acts relative to an alienation, &c., were to take place. But by the Regulations about the general registration of the land and the population, of the 14th Djemaziul achir, 1277, functionaries ad hoc for the drawing up of the Cadastre have been appointed in the departments to which, after the promulgation of the law of the Vilayets have been assigned the acts of granting lands, but only until the finishing of the Cadastre (Art. 1 of the new instructions concerning the Tapu operations, No. 18). In every capital of the Vilayet there has been established a director of the archives, a sub-director, and a record office with seven secretaries, entrusted with the affairs of the sanjaks and considered as members of the administrative councils relative to affairs about land (Art. 13 of the said instructions). For all that concerns the accessory modifications made in the Regulations and other instructions of the Tapu on account of the new administrative legislation, compare the said “new instructions.”

4. Functionaries of agriculture.—In each vilayet the care of watching over the interests of agriculture and commerce is confided

to a functionary ad hoc (law concerning the Vilayets, Art. 12), who however is not included amongst the ordinary members of the administrative council (Art. 13, *cod.*). It is to be remarked only that suits between agriculturists on account of cultivation or damage done to sowed lands, are prosecuted before the competent authorities in presence of the said directors. Officer for Agriculture, &c.

5. See the note 133 of the Land Law respecting the Imperial Archives of the capital, of which there is question in the article. As regards the archives of the Vilayets (see note 3 and Art. 22).

6. See the law on the extension of the right of inheritance, which has modified Arts. 54-55 of the Land Law, in the note 100 of the Land Law. If the delivery of the title-deeds, on account of a transfer has not taken place in time, the tax 5 per cent. (Art. 8) will always be paid in a possible case of sale; see Arts. 10 and 13 of the Regulations (No. 3). Formalities and fees upon succession.

7. As regards the meaning of the term "hypothèque," compare note 176 of the Land Law, and Arts. 25-30, and notes.

8. Compare Art. 36 of the Land Law, note 74.

9. The heirs of the owner must have a new title-deed of ownership (Tapu) in their name, and pay the fixed fee for the hereditary transfer of the lands. It is this violation of the law (and not the irregularity of the forms) of which there is question in Art. 10. Compare also note 6 and Art. 13 of the Instructions there mentioned. New title-deed for heir.

10. Compare Arts. 77 in fine and 78 of the Land Law.

11. Compare Arts. 3 and 129 of the Land Law.

12. See also Arts. 9-10 of the Regulations (No. 3).

13. Compare also Art. 5 of the Regulations (No. 3). If these Waste lands are planted with cotton, the owners enjoy, besides, an immunity for five years; compare a transitory law, which is fixed to be in force for ten years, dated "26. Redjeb, 1278," on the measures taken in favour of the culture of cotton. lands.

14. Compare Art. 104 of the Land Law and note 162.

Lands held
by Imperial
grant.

15. By the law on the extension of the right of inheritance to the collateral relations of the deceased, as regards land Emirié and Mevkufé, it has been ordered that the provisions of the said law be applied to the lands and chiftliks held in virtue of imperial title-deeds of property, mulknamei humayun (see Art. 4 of the said law).

16. See note 3.

17. See also note 3.

18. Compare, as regards the right of preference, Arts. 41, 42, 44, 45, 59, modified; 64, 83, 112 of the Land Law, and the notes 83, 106, 107, 112, 116 (eod.). See also Art. 15 of the Regulations (No. 3).

19. Compare Art. 2 and notes and Chapter IV. Mahlulat vacancy, Art. 59 modified, and following, of the Land Law.

20. See note 3; compare also Art. 15 of the Instructions (No. 4).

Reward for
disclosure
of informa-
tion.

21. As regards the information of Vakf property held unjustly by individuals without any knowledge on the part of the pious foundation (of the Vakf) to which it belongs we must discriminate: (1) For Mevkufélands the informer receives as remuneration 5 per cent. on the amount of the value of the land, for urban lands five per thousand (compare an official proclamation). Within the circumscription of the sixth municipal circle of the capital, the fee Ichbarié belongs to the said municipality, whose Council must give notice of the properties which are returned to the Vakf (compare Art. 62 of its general Regulations). (2) In the provinces the informer receives 1 per cent. (compare Art. 45 of the Regulations, on the attributions and duties of the directors of the Vakfs situated in the provinces of the 19. Jemaziul akhbir, 1280, classed in the Administrative Law, under the title "Administration of the Evkaf," see note b, § 1, of the Land Law).

Superses-
sion of
certificate.

22. This system has been modified; instead of the certificate in question as a provisional title until the sending of the title-deed of possession by the Record Office of the Imperial Archives, there is delivered to the possessor a printed indicative table taken from the

Registers à souche (see the Preface to the Regulations, No. 3; compare notes 24 and 25).

23. See note 3 in fine.

24. This is at the Imperial Archives of the Empire in the capital, and not at the Archives of the Vilayets (compare note 133, page 307, and note 5).

25. As regards the functionaries ad hoc, compare note 3. As regards suits, see also Art. 30, and notes 28 and 32. It is to be observed that no proceedings in the Courts nor any act of transfer of any landed property whatever before the functionaries ad hoc can take place if the interested has not proved by the *teskéré* ad hoc the payment of the taxes (compare Art. 3 of the 6th Part of the Regulations of the Cadastre mentioned in the note 3); also, every Ottoman subject in general, and in the places where the Cadastre is finished every tax-payer, must in such a case produce his personal certificate (*noufous-teskeressi*) to prove his identity and the payment of the dues on his land and revenues, which according to this system is to be viséed on the back of the document (compare the ordinance on personal certificates classed in the Administrative Law under the title "Cadastre," *Lég. Ott.* Vol. III.).

26. Compare the Arts. 116–118 modified of the Land Law, and on the modifications made to it, in note 176. It must be observed that by the terms "*hypothèque*" and "*hypothéquer*" is intended the institution "*fragh bil vefa*," according to which, as seen in the Art. 27, the creditor cannot during the lifetime of his debtor prosecute him for the compulsory sale of the mortgaged lands, except in the case where the debtor has appointed in the document ad hoc an attorney for this purpose.

27. See Art. 116 of the Land Law and the preceding note.

28. The law intends here the Councils of the previous administrative régime; but according to the present régime, which prohibits all interference of the Administrative Councils in the judicial affairs (Arts. 14, 34, and 48 of the law on the Vilayets), the question presents

Courts for mortgage matters. itself whether these Councils are still competent in this respect, or if it be the ordinary Courts.

According to the law on hypothecation of property (No. 16), the ordinary Courts of the sanjaks and the kazas are competent to give the authorisation to mortgage a property in virtue of which the Local Civil Religious Court (mehkemé) delivers the document (hodjet) of the mortgage act. On account of the generality of the expressions of this law, its provisions might be considered as relative to domanial lands; but on considering that every act of alienation of mirié lands is made before the functionaries of the Tapus (note 3), even after the promulgation of the law of the Vilayets (compare Arts. 1-2 of the instructions concerning Tapu operations), it must be admitted that the act of mortgage must be made before the Administrative Councils in presence of the functionary ad hoc, and not before the Courts (compare also the law on the forced sale of mortgaged property, both Mirié and Mevkufé, for the payment of the debt in case of the death of the debtor, No. 15). On the other duties of these Councils compare note 3, above. But if such a voluntary jurisdiction belongs to them, it is not the same as regards the litigious jurisdiction, that is, suits between debtor and creditor about mortgage. In this case it is the ordinary Courts to whom the competency belongs, and not to the Councils, who by law are prohibited from all interference in judicial affairs. (See also Art. 30, and note 32.)

29. By the provisions of this article those of Art. 117 of the Land Law have been completed.

Sale of mortgaged lands. 30. The Art. 28 has been modified by the law on the compulsory sale of Mirié and Mevkufé, &c., property, in virtue of which, after the decease of the debtor, the forced sale of the mortgaged property is permitted (compare especially Arts. 2 and 4 of this law, No. 15).

Liability of other lands of mortgagor. 31. Compare also Art. 4 of the law mentioned in the preceding note. However, if the creditor holds an executory document, we can say that, according to the new law on the compulsory sale of landed property (No. 22), the sale of the other lands held by the deceased may be proceeded against by the mortgagee creditor,

because the law makes no distinction between the cases of the decease or the existence of the debtor, as it does in mortgages.

32. As regards the voluntary jurisdiction of the Administrative Court for Councils in this respect, see note 28. By Council the law means mortgage matters. also here the local administrative according to the previous régime, to which Council was attached both the jurisdiction and the administration (note 3), but after the separation of this authority the jurisdiction in this respect belongs to the ordinary tribunals (see the said note 28; compare also note 25).

33. See note 3.

34. As regards the judicial or vulgar sense of the term (*chiftlik*), *Chiftlik*. as also the right of succession concerning them, see Art. 131 of the Land Law. With respect to legislation about minors, compare the Arts. 18, 20, 50-53, 61, 63, 65, 76, and the respective notes of the Land Law.

35. *Mevkufé* lands, depending on the public domain and *Mevcoufé*. assimilated to *Mirié* lands.—Compare Art. 4 of the Land Law; see above, Art. 30.

Notes to 3.

1. See No. 1.

2. See No. 2.

3. That is the *Tapu* Law. As regards the Supplementary Instructions (see No. 4).

4. The public functionaries and all other individuals who are Liability of guilty of an act contrary to the arrangements relative to the putting officials. up to auction and to the adjudication of the revenues of the State, or in opposition to the other provisions of the law which governs the farming of the revenues, will be dismissed from their functions and be punished by imprisonment of one to two years or by exile of two or three years. They will be required to indemnify the public treasury for the losses which this fact may have caused (Art. 88 of the Ottoman Penal Code; compare, however, Art. 83 of

the same Code as well as the Art. 88, and the note 141 of the Land Law).

5. Compare Arts. 3 and 129, and notes 13, 14 of the Land Law.

6. Compare Art. 7 of No. 4.

7. Compare, in regard to joint possession, Arts. 15 to 19, §§ 2, 35, 41, 43, and 59; § 8 of the Land Law, Art. 8 of the Instructions (No. 4).

8. Compare Art. 10, and notes 6 and 9, of the Tapu Law; Art. 5 of the Instructions (No. 4).

9. That is to say, according to the ancient administrative division of the Empire. As regards the present, compare the law of the Vilayets and note 3 of the Tapu Law.

10. That is the Instructions (No. 4).

Notes to 4.

1. See No. 1.

2. But the promulgation of this Law took place the 7th Ramazan, 1274 (21st April, 1858).

3. See No. 2.

4. Alienation of land. Compare Art. 36 and following of the Land Law, Arts. 3-4 and 6 of the Tapu Law, Art. 2 of the Regulations regarding Tapu Seneds, and Art. 3.

5. Hereditary transmission. Compare 54 and following of the Land Law with the respective notes, Arts. 5 and 8 of the Tapu Law, and Art. 4.

6. Granting of lands. Compare Arts. 103-105 of the Land Law, Arts. 12-13 of the Tapu Law, Art. 5 of the Regulations regarding Tapu Seneds and Art. 3 of No. 18.

7. Delivery of title-deeds to those who have none. Compare Art. 11 of the Tapu Law, Arts. 1, 9, 10 of No. 18.

8. Exchange of old title-deeds against new ones. Compare the

articles pointed out in the preceding note. As regards foreigners, compare note 2 of the Tapu Law.

9. Delimitation of lands. Compare Art. 47 of the Land Law as regards the legal effects of the fixing of the boundaries between seller and buyer. See also Art. 4 of No. 18.

10. Chiftlik. Compare Art. 131 of the Land Law. Arts. 31-33 of the Tapu Law, Art. 6 of No. 3.

11. Woods Mulk (Art. 29 of the Land Law) and woods destined Woods. for firewood and held by Tapu (Art. 30 of the same Law). On these kinds of woods a rent is imposed (*ijarei zemin*) equivalent to the tithe, whilst other woods or private gardens are subject to the legal tithe (Arts. 25, 28 of the Land Law).

12. Khirmen, or space for mills and threshing-floors. Compare Art. 34 with note 66 of the Land Law.

13. Ground for sheepfolds. Compare Art. 94 of the Land Law.

14. Land subject to a fixed payment. Besides the lands mentioned in the preceding notes (10-13), even the open spaces used *ab antiquo* as market-places and fairs are also subject to a fixed payment (compare Art. 95 of the Land Law).

15. Place of encampment for beasts : Compare Art. 24 of the Land Law regarding those which are held by private individuals by Tapu title, and Art. 101 of the same Law as regards those which belong to a commune.

16. Pasturages as dependencies of Chiftliks. Compare 99 of the Land Law.

17. Compare the preceding note.

18. Compare Art. 76 of the Land Law, and Art. 8 of the Tapu Law.

19. Terres mortes (dead lands). Compare Art. 103 of the Land Law, Art. 12 of the Tapu Law, Art. 5 of the Regulations regarding Tapu Seneds, and note 6 of No. 4.

20. See note 4.

21. Exchange of lands. Compare Art. 36 of the Land Law with Note 74, Art. 7 of the Tapu Law.

22. Compare note 5.

23. Compare Art. 10 of the Tapu Law and note 9 eod., Art. 13 of No. 3.

24. Right to Tapu. Compare Art. 59 modified and notes 100, 106, and Articles pointed out in note 140 of the Land Law.

25. Lands fallen to the State (by escheat). Compare Art. 59 modified, and following of the Land Law; Art. 18 of the Tapu Law; Art. 15 of No. 3. Compare also note 19 of the Land Law.

26. Clandestine possession. Compare Art. 77 of the Land Law, and Art. 4 of No. 3.

27. Compare Art. 2 of No. 3.

Notes to 8.

1. See note 4 of No. 3.

2. As regards vakf houses, compare No. 23.

Title-Deeds of Vakf property. 3. In virtue and in consequence of the arrangements contained in the Instructions in question, the Ministry of the Evkaf has published the following notification.

NOTIFICATION CONCERNING THE TITLE-DEEDS OF VAKF PROPERTY.

To have the benefit of dedicated property (vakf), urban or rural, it is necessary as much after the civil law as after the religious law, to provide oneself with a permit emanating from the manager of the competent vakf, so that if the holders of lands dependent on a vakf, and held by inheritance, by purchase, or even for any other reason, have not an official document validating their right of possession, they will be obliged to obtain such a title-deed. This same regulation is applicable to proprietors, by virtue of a hojet, of buildings, vineyards, and trees, which are on vakf lands. These proprietors must furnish themselves, if they have none, with a correct permit for the dedicated lands, where the said buildings, trees, &c., are situated. The holders of title-deeds emanating from any other authority than the manager of the vakf, will also be obliged to obtain correct title-deeds as the law directs. In order to

facilitate and secure at the same time the service there must be Title-deeds given to those who have a right to them, certificates detached of Vakf from the registers, with counterfoils which have been sent to all property. the managers of vakfs, until the sending of the definitive title-deeds by the Central Treasury of the vakfs. These certificates will be filled up in the way previously indicated. On the arrival of the definitive title-deeds they will be delivered to the holders of the certificates, and these will be collected and sent to the Treasury of the vakfs. Those persons who for the first time obtain vakf title-deeds will pay the legal fees according to the nature and value of the property they hold; they will pay besides three piastres as cost of the paper, and one piastre as fee of the office. The holders of valid title-deeds, bearing, that is, a known seal, who wish to exchange their title-deeds against new ones, will also pay a fee of three piastres as cost of the paper, and one piastre as office-fee. They may thus have vakf title-deeds according to rule.

The holders also of title-deeds emanating from the Treasury of the vakfs, and having at its head the Tughra, may also exchange their title-deeds, which are no longer in force, against new by paying the above fixed fees.

He who gives information of dedicated lands held without the knowledge of the competent vakf will receive as a recompense a fee of five per cent. on the sale by auction of the said lands. As for he who informs as to urban property, which falls to the vakf by the extinction of the owners, he will receive as a recompense five piastres per thousand.

The fees received, as well as the three piastres as cost of paper and one piastre for office-fee, will be noted on the certificates given to the holders; it is formally prohibited to take anything beyond the said fees. He who infringes these regulations will be severely punished.

The provisional certificates bearing the seal of the vakf which have been already delivered against payment of all the legal taxes to those who have a right to them to be in force until the arrival of the definitive title-deeds which will be delivered to the holders of rural and urban property, will not be replaced by the new certificates which have recently been sent, but they will continue to be in force until the arrival of the definitive title-deeds sent by the Treasury of the vakfs.

He who inherits, from his father or even from another relation urban or rural land, and who takes possession of the said land without having recourse to the competent authority, and afterwards applies to the said authority to sell his land, will pay, as a sort of fine, double fees.

Those who, after the publication of the present notification and the sending of detailed instructions to the directors of the vakfs neglect, without legal hindrance, to conform to the present regulations, that is, if those who have no title-deeds do not hasten to procure them, and if those who have title-deeds emanating from any other authority than the manager of the vakf do not exchange their title-deeds against new ones, and that within the delay of a year, will be condemned to pay double fees, and the holders of lands of which the value pro-rata should be collected, will see their lands sold by auction. For this purpose the present notification has been promulgated in order that every one should conform within a brief period to the Regulations therein contained.

Notes to 9.

1. Compare Art. 4, and especially § 2 and note 20 of the Land Law. Compare also notes 1-2 of the Tapu Law.

2. Compare Art. 4, § 2 of the Law mentioned in the preceding note. See also Conclusion of the same Law.

3. See No. 1.

4. Ijaretein, perpetual renting. Compare Art. 4 of No. 19.

Right to
Tapu.

5. The right to Tapu is devoted only to lands Mevkufé, depending on the domain of the State that is rural property. As regards urban property held by ijaretein (see note 4), such a right to Tapu is not established (see Art. 10 of No. 8). It has already been said that the right of preference to Tapu of collateral relations and the wife of the deceased has been abolished, as a consequence of the right of inheriting, which has been established in their favour (See notes 106 and 130, § 3, of the Land Law).

6. See No. 8.

Notes to 10.

1. As regards the laws relative to the right of inheritance at common law, that is the legislation relative to the inventories of inheritances in general and of Christian inventories in particular, see Lég. Ott. Vol. I. No. 10, page 27, and the Vezirial Order, Lég. Ott. Vol. I. No. 11, page 41. Right of inheritance.

2. Archives of the Sublime Porte. By this law the provisions of the Land Law relative to the order of succession of Mirié and Mevkufé Lands have been essentially modified. Thus Art. 55 and §§ 1-7 of Art. 59 of the said Law have been abolished; consequently the provisions relative to the right of preference to Tapu of the collateral relations and of the wife or the surviving husband established by the Law have no longer any application, because the law in question has declared them to be legitimate heirs. Compare notes 96, 100, 106 of the said Law. Rules of inheritance amended.

3. That is Art. 54 of the Land Law.

4. The law of succession of the surviving husband, or of the surviving wife has been recently completed by the following supplementary article. Husband and wife.

When a divorced husband or wife contracts a new marriage before the expiration of the legal delay, and he or she dies before there has been any conjugal intercourse, the survivor of the divorced inherits the property of the deceased. In the same way when a husband seriously ill divorces his wife and he dies before the expiration of the legal delay relative to divorce, the divorced wife inherits, according to the Sheri, the deceased husband.

5. (1) Firagh bil Vefa; as regards this institution compare Mortgage. Arts. 116-118 of the Land Law, Arts. 25-30 of the Tapu Law, and as regards the new laws which have completed or modified the provisions of the Land Law, note 176 of the said Law. (2) Compulsory sale. Compare Art. 115 of the said Law, which has been modified by the laws mentioned in note 175 of the Land Law.

6. Compare Art. 121 of the Land Law and Art. 15 of the Tapu Law.

7. Compare Arts. 25, 26, 29, 44, 59, §§ 7, 66, 81, 83, 90 of the Land Law, relative to trees and buildings, as also their respective notes.

8. But up to now, no new edition of the Laws in question has been published.

Notes to 11.

1. This temporary law has ceased to be in force on account of the expiration of the time on one part, and on the other in consequence of an Imperial Order which the Government has communicated through the newspapers.

2. Compare Art. 4 and note 6 of No. 10.

Notes to 12.

1. Under this denomination is understood the lands vakf on which buildings of all sorts are erected (official note).

2. Musteghillat, urban immovables which have no buildings but which bring in profit or a rent (note official).

3. The Ijaretein, which literally signifies two rents, constitutes the essential character of the vakf property. The first rent, called Ijarei Muajele, anticipated rent, is paid at the moment of taking possession; and the second, Ijarei Muejele, or rent when due, constitutes the rent which the holder of the vakf property must pay every year (official note).

4. See note 4 of No. 10.

5. See No. 14.

6. See No. 14.

7. See Art. 3, note 5 of No. 10.

Mukata.

8. Mukata signifies forfeit rent; under this form the owner of a vakf frees himself of all obligation towards the administration of the Evkaf beyond the annual payment, and the buildings which are on the vakf lands are considered as Mulk (official note).

Note to 14.

But this law (No. 12) bears the date of the 7. Sepher, 1284.

Notes to 15.

1. See Note 5 of No. 10.
2. See page 81.
3. Right to Tapu see notes 24 of 4, and 18 of 2.
4. See note of 14.
5. However see note 31 of 2.

Note to 16.

With reference to the hypothecal régime, Feragh bil vefa, com- Mortgage.
pare note 176 of Land Law, as also the Arts. and laws there mentioned; see also notes 26 and 28 of the Tapu Law. With respect to what has been said in note 28, it is to be observed that the tribunals civil-religious (sheri) are competent to legalize judicially the title-deeds issued by the competent authorities (see note 5 of No. 19).

Notes to 18.

1. These instructions, which bear no date, have been issued, according to what is said in Art. 2, after the new administrative system—that is, after the promulgation of the law of the vilayets, which took place in 1867. They are then the newest Instructions, having in view to regulate certain things according to the present administrative régime, and to determine the duties of the new functionaries of the Tapus, which provisionally, until the termination of the Cadastre, are charged with all that is relative to title-deeds of possession of the domanial lands, whilst, as is known, the functionaries of the finance and the Kaïmacams are the ordinary officials of the Tapus. Compare note 130 of the Land Law, and note 3 of the Tapu Law.

2. See No. 1.
3. See No. 2.
4. See No. 4.
5. As regards No. 3, compare note 9.

6. Alienation and transmission. Compare notes 3-4, and 12 of No. 4.

7. Lands escheated to the state (put up to auction). See note 25 of No. 4, and No. 20.

8. Clandestine possession (See note 26 of No. 4).

9. That is Nos. 1, 2, 3, 4, and 18.

10. Exchange and delivery of title-deeds. Compare notes 7-8 of No. 4; see also Art. 3 of the Land Law.

11. Lands granted to colonists. Compare the law on colonization in Turkey by foreign families; and especially Arts. 4, 8, and 9.

12. Compare Arts. 104-105 of the Land Law.

13. Compare note 130 of the Land Law, and note 3 of the Tapu Law.

14. See the preceding note. As regards the sale by auction compare No. 20.

15. Right to Tapu. Compare note 24 of No. 4.

16. Compare in regard to this what has been said in note 20 of the Land Law.

17. Compare Art. 111 of the Ottoman Penal Code.

Notes to 19.

1. As is seen, the renting with double payment corresponds to *locatio perpetua agrorum civitatis* of the Roman legislation (see note 25 of the Land Law).

2. See No. 12.

3. *Cum finitus fuerit usus fructus, revertitur ad proprietatem et ex eo tempore nudæ proprietatis dominus incipit plenam habere in re potestatem* (Inst. § 4, 2, 4).

4. See Regulations cited in note 21 in fine of the Tapu Law, and also No. 23.

5. As regards the other formalities relative to the judicial legislation of the title-deeds in question, even those of domanial lands by

the tribunals civil-religious, compare the Regulations as to their jurisdiction inserted in the section "Le droit judiciaire" of the "Droit public," especially under the title "Jurisdiction exceptionnelle."

6. See Nos. 15 and 16, as also note 26 of the Tapu Law.

7. That is, the tribunal civil-religious of control or inquiry.

Note to 20.

1. Note 130, § 1 of the Land Law, as also Art. 18 of the Tapu Law, were already printed when we learnt the publication of the Order in question. It is for this that we have not mentioned it.

Note to 22.

1. By this law the provisions of Art. 115 of the Land Law which established the inalienability of the domanial land without the consent of the owner have been abolished. Compare in this respect what has been said in note 175 of the same Law, see also Nos. 7 and 15. As regards compulsory sale: (1) of the immovables belonging to a foreign bankrupt by the syndics of his bankruptcy; or, (2) of the immovables of a foreign debtor by another foreign creditor who has obtained a judgment before foreign Courts, compare Art. 3 of No. 13. Sale of lands for debt.

Notes to 23.

1. See the note 4 of No. 19.
2. Compare the Art. 6 of No. 19.
3. Possessio alternativa?

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